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POPULAR GOVERNMENT

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1936

«Uncle Pete's» Political Palaver

●

General Assembly knows what to do about customary deficit, says Uncle Pete, but a surplus is another matter—A new slant on legislative problems to go with talk of special session.

●

UNCLE PETE," aside from being our best liked town loafer, is also our best known political commentator. Now "Uncle Pete" has never held a political office. In fact the only time he ever had any official authority bestowed upon him was shortly after those three convicts escaped from the county jail and the sheriff organized a searching party. The sheriff must have needed men pretty badly or I guess he wouldn't have deputized "Uncle Pete." Anyway, "Uncle Pete" was mighty proud when the sheriff swore him in. He bristled up with importance and went home to get his gun. That was the last the sheriff or any of the other deputies saw of "Uncle Pete" until the morning after those convicts had been found and safely locked up again.

No one but "Uncle Pete" knows just where he spent those two nights and a day. He says he spied three suspicious characters on the way back to the courthouse and figuring they were the escaped jailbirds decided to bring them in single handed. That he followed them into the swamp across the river and got lost. How he managed to find his way home just an hour after the convicts had been captured is still a mystery. However, his adherence to the theory that discretion is the better part of valor has not deterred the boys around "Dad" Jones' general merchandise store from depending on "Uncle Pete" for sidelights on politics and world affairs.

Now many of "Uncle Pete's" facts are slightly distorted, but when he gives his comments on any subject you will usually find some good old home-spun truth and philosophy hidden in them.

The other night I dropped by "Dad's" to get some smoking tobacco and found "Uncle Pete" and some of the boys sitting around the big stove chewing tobacco and talking about state taxes, so I decided to listen in for a few minutes. "Uncle Pete" flipped open the door to "Dad's" stove and shot a stream of tobacco juice into the hot fire with a sizzle without letting a drop fall on the outside. The boys will tell you that "Uncle Pete" is a champion when it comes to putting tobacco juice through the stove door. Why they say he can hit it dead center from ten paces.

The "Gold Rush"

"Uncle Pete" wiped his mouth with the back of his hand and continued: "Folks are kicking up a lot of fuss about this sales tax, but they don't know what a job our last General Assembly had on its hands. Why they went to Raleigh faced with a problem more difficult than any I remember. Back in the good old days the boys always went to Raleigh knowing there would be a deficit. They all knew what to do with it 'cause nobody wanted the thing. They just kicked it around until it got lost. But this last bunch of boys went up there in the face of a surplus in the highway fund of over eleven millions of dollars. Now, a surplus is different. Nobody knows just what to do with it, 'cause everybody wants it.

"Well, the boys hadn't got acquainted with each other good before the fun started. The first thing that greeted them was a bill to appropriate three millions of the fast growing surplus for emergency highway repairs which it was claimed was needed because the boys in 1933 didn't give 'em enough to make repairs like they should have been made. I guess they were right 'cause you couldn't hardly get over to Jim's mill from here last winter. 'Course that road ain't been touched, but then it's been dry and you can always get over to Jim's place in dry weather. Anyway, the boys decided that something ought to be done about our roads so they gave 'em the three million.

"Just about time everybody was getting ready to think up something to do with the rest of that money the highway folks told 'em to be careful because Uncle Sam wasn't going to give us any more highway money unless we matched it dollar for dollar. Well, the boys got to figuring and found that it would be necessary to give the highway folks about three millions each year to build roads. They also found that this wouldn't bother the present surplus so much 'cause that money would come out of next year's taxes.

"The highway folks then told the boys that they must allow more money for repairs to roads. The boys didn't know what roads needed fixing or how much it would cost so they just gave the highway folks all they wanted which was about four million or so more than they got in 1933. This didn't worry the boys none, 'cause they figured that this also would mostly come out of next year's taxes.

"The highway folks told the boys what pitiful wages they were pay-

(Continued on page twenty-one)

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Notes from the Cities and Counties

A vigorous and sustained drive to collect delinquent taxes dating as far back as 1927 has enabled Lee County to avoid an increase in tax rate, bringing in $26,184.16 of the $35,000.00 which County Attorney K. R. Hoyle estimated, and the foreclosure suits are yet to be filed. Other units are utilizing the same policy to their own advantage as well as that of the prompt taxpayer.

* * *

Greene County dedicated a new Court House and Rockingham a new Post Office last month. Bids have been called for for the construction of another new Federal building in Burlington. Stanly County is going ahead with plans for a $380,000 school building program under the P.W.A. The P.W.A. has also approved a $183,000 water works project for Concord. Winston-Salem has launched its $85,000 Muddy Creek Drainage project and is also making extensive improvements to the municipal airport with the aid of W.P.A. funds.

* * *

Daily inspection and examination of jails and inmates has been proposed by John F. Boyd, Charlotte official, as a means to prevent the recurrence of recent charges of negligence and mistreatment in various jails and prison camps, and remove any doubt regarding the care of prisoners. "The cost of such examination would not be great," in Mr. Boyd's opinion, "and it would assure all prisoners being humanely treated and given medical attention if needed."

* * *

Plans have been formulated to combine relief work in Winston-Salem and Forsyth County with the Community Chest under a single, unified staff. The proposed merger would promote added efficiency as well as economy, in the opinion of the officials responsible therefor, by eliminating the present duplication of investigations and provisions for relief.

* * *

The percentage of tax levies collected up to February continued to soar, with the city of Wilson reporting 75% and Gaston County listing 70% as already collected to lead the parade. However, it remained for Edenton to claim the nearest perfect record for a back levy. Miss Louise Coke, the collector, asked the Council to be relieved of $146.91 of uncollectible taxes for 1934, and the Council readily agreed—the amount represented less than four-tenths of one per cent of the total levy. Meanwhile Mecklenburg continued to lead all units in the amount which it was under its budget, County Accountant Douglas Bradshaw's figure for the first seven months being $24,573.

Beginning this month this section will be conducted by a group of prominent officials who have accepted invitations to send in notes from their cities and counties and to serve as its editors. Other officials are asked to send governmental news of their units and officials direct to POPULAR GOVERNMENT and join in making this section a clearing house of information, experience, thought, and methods.

"One more payment and it will be ours." The Elizabeth City-Pasquotank County ABC store has completed its payments for all fixtures and stock except the cash register, and it has the money to cover that, but the vendor prefers continuance of installment payments. Henceforth the store, which opened last July 24, will take discounts on its purchases, and all profits will be clear to the city and county.

* * *

Wilmington Commissioners have announced their intention to seek passage of an act by the next legislature providing a single pension plan covering all city employes. The New Hanover city already has a police pension fund, supported jointly by contributions from the city, assessments on salaries, and special fees and gifts.

* * *

Charlotte is making a thorough and intensive youth survey, sponsored by the N.Y.A., looking to the collection of important data for use in the solution of unemployment, recreation, health, education, delinquency, and other youth problems. The survey will employ 22 canvassers and will cover both white and colored.

* * *

Prior to 1930 Durham, like a number of other counties, fed its jail prisoners from local cafes and restaurants. The annual saving since the County put in its own kitchen and dining room is reported to be 50% or $4,000. Although this is one-half the former cost per prisoner meal, the food is said to be of the best quality, well-cooked, and served hot.—D. W. Newsom, County Manager.

* * *

Washington County is preparing to refinance its obligations through the Local Government Commission to enable it to borrow money to build or recondition a school building at Creswell. In the absence of the necessity to borrow money for this purpose, this county could pay off its defaults in about two years.

The Commissioners of Washington County are making every effort to obtain an Agricultural Building through W.P.A. This county is essentially agricultural, and is capitalizing its most profitable resource. The main trouble is drainage, and it has not been able to obtain any relief through WPA, or any other government relief agency. — Z. V. Norman, County Attorney.

* * *

Robeson County took honors among North Carolina local units for last month's bond sales, disposing of $55,000 worth of road refunding bonds at the exceptionally low rate of 2%, with a premium of $27.50. Among the other sales and rates, which were uniformly favorable, were the following:

Alamance County — $226,000 school building, 4%.

Davidson County—$50,000 school building, 4½%.

Charlotte—$460,000 in seven issues, averaging 2.92%.

Greensboro — $367,000 sanitary sewer, 4%.

Roxboro also completed its refunding plan, which involves roughly a half-million dollars and which is said to have been agreed to by 90 per cent of the bondholders.

Practical Methods for Discovering and Assessing Personal Property

By
A. C. HUDSON
Tax Supervisor for
Guilford County

PROBABLY no governmental activity is more important than the assessment function, which provides the foundation for the entire financial structure of local government. The tax assessor who plots his course and follows his compass will reach his port without difficulty; however, it takes careful planning, preceded by thorough study of the particular unit, with constant check-up on methods and results. The purpose of this article is to set out some of the methods which we have used with success in discovering and assessing personal property in Guilford County.

One of the most productive of these has been the business survey which we make each March, embracing a systematic check of businesses and offices in each block. It is not infrequent to find two, three or even four separate businesses operating in the same store, and often only one of the number will be found to list. Such a visit also puts the assessor in a position to judge later as to whether the taxpayer is making a fair return of his fixtures and stock of goods. I recall one case where a merchant listed $3,800 after telling me he carried a $17,000 stock. When he discovered his mistake, he protested that he kept no books, but our check of his purchases and sales as shown by his Federal Income Tax report showed not a 17 but a 21 thousand dollar stock. We estimate that our business survey last year netted $100,000 additional assessment.

A list of all individuals and firms engaged in business locally is invaluable in making sure that every business has made a return. Likewise a list of domestic corporations, which may be secured from the Secretary of State. An important by-product of a close check-up of this type is the influence which it has on this class of taxpayer the following year—and on his friends, for this kind of news travels quickly.

Personalty—$500

Household and kitchen furniture is a much abused item with tremendous possibilities for increased assessments. It is a common practice in many sections for a man with a 10 or 20-thousand dollar home to declare the customary $500 furniture the same as the small householder, not because he wishes to violate the law but because "everybody else does it." To meet this problem we borrowed an idea from neighboring Forsyth County and made a detailed investigation of a representative group of homes, appraising and securing the owner's appraisal on every item from basement to attic. The result was our 15% rule, namely, that the average assessment for the typical small or middle class home should equal 15% of the value of the house and lot, or in the case of rural areas, of the house plus one acre of land.

This rule has increased our valuations many thousands of dollars, for we no longer accept in any event a declaration of less than 15%, so that owners of 10 and 20-thousand dollar homes must declare at least $1,500 and $3,000, respectively, instead of $500 as many of them formerly did. The usual $300 exemption is allowed on these values. If the taxpayer objects, we have a Furniture Appraisal Committee which makes a detailed appraisal and reports its findings to the Board of Equalization for approval. The appraisers are drawn from furniture stores and are not otherwise connected with the Tax Department.

How successfully the plan has worked is shown by the fact that we had only 89 complaints the first year and about 50 the second. I have seen the Appraisers double and triple the 15% assessment on complaint, and I have seen them reduce it, but after all is said I know of no fairer rule. It has also been our experience that the taxpayers willingly accept and declare the higher valuations once they are convinced that the assessments are uniform and each is being treated alike.

Uniformity in Valuation

The listing of live stock and automobiles, which in the past showed the same lack of uniformity of valuation, offers much the same problem. We now have seven listers to investigate the prices of all live stock throughout the county in advance of the tax listers' meeting, and take for our valuations an average of the prices so secured. We have secured the same result in the case of automobiles by use of the "code" or "blue book," worked out by the auto industry itself as the standard of values for trade-in purposes.

Equally indispensable in the valuation of autombiles is a list from the Motor Vehicle Department showing the name of each car owner in the county with the make and model. If this is not available, an unscrupulous taxpayer may declare a 1933 when he has a 1936

Mr. Hudson's talk at the annual pre-listing sessions of the Institute of Government in Raleigh this month, attended by tax officials from 70 counties, made such a hit that POPULAR GOVERNMENT was besieged with inquiries to carry this condensation. The writer, who has done some of the State's outstanding work in the field of personal property, was re-elected President of the Tax Supervisors' Division of the Institute. Others to take prominent parts in the Raleigh program included Governor Ehringhaus, Revenue Commissioner Maxwell, Assistant Attorney General McMullan, and Tax Supervisors Henderson of Mecklenburg, Flynt of Forsyth, and Penland of Buncombe.

model, with three years' loss of value.

Now comes what is known on our abstract as "All Other Personal Property," which includes radios, pianos, diamonds, jewelry, and what have you. These items are the most abused of all, as the taxpayer knows that you have no check. However, our Department assumes that the average taxpayer has one or more of these items, and perhaps several if he lives in a restricted district, and our listers have followed instructions to bear down with good results.

We have also added many thousands of dollars' valuation by two other simple methods. First, we require every business to furnish a list of male employees from 21 to 49 which we check against our scrolls for poll taxes. Secondly, we check the records in the office of the Register of Deeds for taxable papers, such as chattel mortgages, mortgage deeds, and deeds of trust, and in the office of the Clerk of Court for the estates and funds of Administrators, Executors, Guardians, etc. We have found it highly profitable to keep up with the accounts of each administration and to check the inventory of the assets of each estate, which must be filed annually, against the tax scroll.

We also send special notices in advance of tax listing time to all Administrators, Executors, and Guardians, citing the sections of the Machinery Act setting out their duty and outlining their liability for failure to make returns on such property. We have found scores of fiduciaries who were under the impression that no tax return was due, but we have quickly corrected this wrong impression.

It Pays to Advertise

Guilford County utilizes the newspapers and radio for an intensive advertising campaign which we have found to be a tremendous boon in the work of listing. The first step is a quarter-page display ad in both morning and afternoon newspapers, giving a resumé of the chief information as to who should list and what and when. This is followed by five or more one-inch notices stressing dates and calling the taxpayer's attention to the importance of listing. A fifty-word notice is read over the local radio station each evening at seven o'clock, and I personally go on the air once each week for a longer talk explaining the various phases of taxation.

Another innovation which we have used with good results is a notice designed like those Western Union leaves when a boy has attempted to deliver a message and there was no one at home. This notice, which always begets attention, is placed on the doorknob of each of the 12,000 homes in Greensboro about April 10.

We have encountered numerous cases in which the taxpayer's failure to list was due to an honest but erroneous impression, as that the $300 exemption on personal property or the debt on his car excused him from the duty to list. Our educational and advertising efforts have gone far to correct this situation, and have been of tremendous help in bringing this class of taxpayer in and promptly.

There is one point I want to stress: There is no trick or magic to discovering new property and increasing the valuation on the old; all it takes is a little common sense and a lot of application, and the foregoing examples can doubtless be multiplied many times by tax officials with these prerequisites. As all of us know, millions and millions of dollars of personal property never reach the tax scrolls, and unless tax officials make a concerted effort in this field, they will pass up valuable revenue which would tend to reduce the tax burden of those who are paying their share.

Helpful Books

Better Government Personnel. 182 pp. The Report of the Commission of Inquiry on Public Service Personnel, Whittlesey House, McGraw-Hill Book Co., Inc., New York, 1935.

Government by Merit. 294 pp. By Lucius Wilmerding, Jr., of the Commission of Inquiry on Public Service Personnel, McGraw-Hill Book Co., Inc., New York, 1935.

The Commission of Inquiry on Public Service Personnel, appointed in 1933, has undertaken to make an exhaustive study and analysis of the personnel of local, state, and federal governmental units, to gather statistics and study the problems of these various units. When 175,000 units of government spend four and one-half billions of dollars annually to employ three and a quarter million public servants, and yet function inefficiently and fail to attract the most competent men available, the public wants to know *why*. *Better Government Personnel* not only answers this question, but also presents a program to be followed if this situation is to be remedied.

In *Government by Merit*, a companion volume to *Better Government Personnel*, Mr. Lucius Wilmerding, Jr., outlines in some considerable detail an individual analysis of the problem, discusses the types of men needed in governmental service, and makes suggestions as to how the service may be made more attractive to these men.

These timely studies will be of great interest to every taxpayer and official interested in better government.

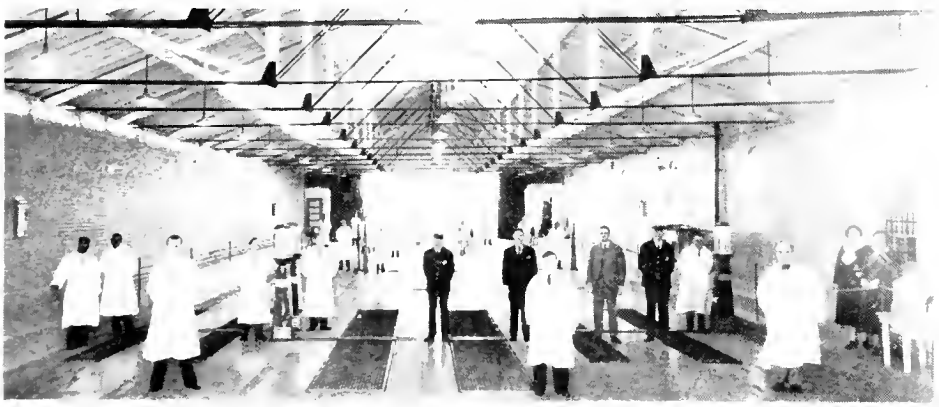
* * *

Alexander Federal Tax Course and Guide. Alexander Publishing Co., New York, 1935. A valuable condensation and clarification of Federal income tax laws and regulations, in two loose-leaf volumes kept up to date by current supplements. Text supplemented by Revenue Act and Regulations, practical problems, and specimen returns, emphasizing 1934 and 1935 changes. Thorough and authoritative, yet characterized by simple definitions and clear illustrations, the two-volume work makes a particularly handy guide for lawyer, accountant, and taxpayer.

* * *

The attention of ambitious officials is called to the opportunities offered by the Institute for Training in Municipal Administration, 850 East 58th St., Chicago. Correspondence courses are now open in three courses, The Organization and Functions of Municipal Government ($20), Municipal Personnel Administration ($20), and Municipal Public Works Administration ($25), and others are in preparation.

Compulsory Auto Inspection Proves Success in Memphis



Vehicle registration increased	17.7%
Fatalities decreased	12.0%
Non-Fatal accidents decreased	43.4%
Cars registered per fatality increased	25.3%
Cars registered per injury increased	51.0%

The two-year record of the Memphis Motor Vehicle Inspection Bureau, summarized above, speaks for itself. The first city in the United States to require regular, compulsory, public inspection of motor vehicles has done a job which has attracted the attention and commendation of officials throughout the country, and its auto owners, rather than being resentful of the requirement, are no less pleased with the results than the officers.

The secret of its success may be summed up in a few words. First, the service is prompt, courteous, efficient. Second, the public realizes that the station is self-supporting and that the annual inspection fee of $1 (covering three compulsory inspections and more if the owner desires) is extremely low. And last but most important, it has brought results, not only in reduced death and accident rates, with the increased feeling of safety, but also in actual savings to motorists on tires and repairs through prompt discovery of defects.

Memphis is a city of 260,000 population with approximately 40,000 motor vehicles. It is astounding, but the number of cars which are found to have defects requiring correction, is approximately 40 out of every 100.

Memphis motor vehicles are required to be inspected once each four months, a total of 500 passenger cars and 100 trucks being called in by license numbers (serially) each day, allowing time for 200 others whose owners desire additional inspections. The only notice required by the ordinance is newspaper publication, but the Bureau also sends a "courtesy" postal card to each auto owner five days in advance of his inspection date. Vehicles are checked for brakes, headlights, wheel alignment, steering, windshields and wipers, tail lights, rear view mirrors, horns, and mufflers. Defects are marked with a punch on duplicate cards, one for the owner and one for the Bureau, and the car owner is given three days to have corrections made and return for a second inspection. When the inspection is passed, an "approved" sticker is attached to the windshield.

And now for the "teeth" of the ordinance: In addition to making any violation a misdemeanor, punishable as such, after sufficient time has elapsed for the inspection and return of the first series of 10,000 cars inspected, any motor vehicles found on the streets without approved stickers are pulled in by the police wrecker as "nuisances" and the owners docketed. After the first 10,000 series comes the second and so on. The City Court has faithfully supported the Police Department in arresting cases, which is responsible in large part for its effective enforcement. Moreover, the Inspection Ordinance has been strengthened by a State Law providing for inspection of out-of-town cars which use the city streets as many as four times a year.

The Inspection Bureau, which is pictured on this page and which is 68 feet wide by 178 feet long, has two lanes for passenger cars and one for trucks, each equipped with two headlight testers, one wheel aligning machine, and one brake machine. The building, a former city stable reconditioned with C.W.A. labor, is well lighted and drained and kept scrupulously clean. The work requires a staff of 26 men, including a Superintendent, traffic officer, 18 mechanics or testers, four clerical helpers, and two porters, with a monthly wage of approximately $2,500. The Bureau limits its work exclusively to testing; no corrections are made, nor will the attendants recommend one garage over another. This has been a vital point in securing the support and close coöperation of the auto dealers and repairmen; at the same time, the second check has been a large factor in securing better repair work.

Several of the larger North Carolina cities staged one and two-week "Safety Lanes" last year with results that amply confirmed the prevalence of mechanical defects and the need for regular and compulsory inspection and check-ups. However, the scattered and periodic tests that were held were for the most part promoted by a private individual whose primary interest was renting safety equipment, sponsored by local civic groups, and financed by local garages and repair shops, with the attendant evils. Although local police and state patrolmen lent their coöperation and assistance, the tests were without the support of legal ordinance or official action, and while they undoubtedly achieved a measure of results for the time, they lacked the advantages of regular inspection and constant check-up. So far as is known, the stage is open for the first North Carolina city to provide such regular, compulsory, and public inspection.

(Any city which is interested in further details regarding the operation of the Memphis Motor Vehicle Inspection Bureau is invited to write direct to Superintendent Van Hiler, or to The Institute of Government, Chapel Hill.)

SOMETHING TO THINK ABOUT FOR THE FUTURE—VOTING MACHINES IN USE IN PENNSYLVANIA

Pennsylvania's answer to crooked politicians and fraudulent elections in that State is the adoption of voting machines like the above, which guarantee an accurate and instant count and reduce to the irreducible minimum the human element and the opportunity for tampering with returns. The voting machines, authorized by a constitutional amendment in 1928, have now been adopted by the city of Philadelphia and 21 counties, covering 63 per cent of the voting population.

One of the best indications that the good people of the Quaker City are not only pleased but satisfied lies in the fact that they rallied to the battle for clean elections and defeated a "ring" effort to discontinue their use after three years by a majority of 95,841 votes. "Thirty wards rejected the proposal," read the Philadelphia EVENING BULLETIN. *"The 18 wards which supported it are organization sections."*

The machines, 2,000 of which are used in Philadelphia, work on the cash register principle and guarantee absolute secrecy, as they will not operate until the curtain is drawn. They take care of nine parties, give an instant count at the close of the polls, and may be checked and corrected if a dispute arises in 10 minutes. Other advantages public leaders claim for them are that they expedite voting, eliminate the chance for tampering during the counting period, and make it virtually impossible for "crooked" districts to hold back returns and "pad" enough votes to elect certain candidates.

Picture and information, courtesy of Thomas J. Walker, Secretary, "Committee of Seventy," Philadelphia.

HERE AND THERE

—With Progressive Officials

To Zagreb, Jugoslavia, go the laurels for devising the most ingenious and diabolical form of punishment for that scourge of city police—the traffic violator. Instead of giving the offender a ticket, the Zagreb officer calmly walks around his car and lets all the air out of his tires.

* * *

A bill pending in the New York Legislature would make it optional for any county to consolidate the assessment and collection of taxes for all its municipalities and special districts under the County Commissioner of Finance, standardizing valuations and abolishing the present duplicating array of agencies. Another optional provision calls for a single unified county budget, including the appropriations and anticipated revenues of all units, with general budgetary control over all by the Finance Commissioner.

* * *

The use of county zoning with a view to lower governmental cost as well as more efficient use of rural land is gaining in popularity. In Wisconsin, where it was first tried out, 5,000,000 acres in 20 counties have been placed in restricted land use areas. Three new states, Michigan, Indiana, and Tennessee, passed laws on the subject in 1935, while eight others already had some type of county planning or zoning.

How much would homestead exemptions of different amounts reduce county tax valuations? Here are the findings of a survey of 31 Oklahoma counties by the State Tax Commission: $500 exemption — 6.4% reduction; $1,000 — 10.3%; $1,500 — 12.8%; $2,000 — 14.2%; $2,500 — 15.1%. The results are of particular interest to North Carolina in view of the constitutional amendment on the subject to be submitted to voters of the State this fall.

* * *

Kentucky Legislators are debating a bill North Carolina cities will follow with much interest, namely, to exempt municipalities from state tax on gasoline used in municipal operations. Other pending bills of interest would relieve municipalities of liability for failure to keep streets in reasonably safe condition, permit fingerprinting of all persons suspected of crime, and require officers handling public funds to publish condensed statements once a year.

* * *

Wide spread ownership of radios has brought with it a new city problem of regulating and eliminating electrical interference. A number of cities, under the power to abate a nuisance, have already passed ordinances providing for inspection and notice with the cutting off of electrical service to the property as the penalty for failure to correct. In some places, a small fee, charged for inspections, is used to purchase equipment for detecting interference.

* * *

Restriction of municipal borrowing power, a prohibition against state action increasing the cost of local government, and a broader municipal tax base are the chief planks in the platform for "municipal financial stability" which the New York State Conference of Mayors is urging before its Legislature.

* * *

Rural units scattered over the country are coming more and more to recognize the obligation of providing fire protection to their inhabitants. The three most popular methods seem to be: (1) organize rural district for financing and contract with nearest town for service; (2) Have town maintain separate truck for rural calls with county sharing cost; (3) Let town make flat charge for each run into rural area.

* * *

A "Prosperity Tax Drive," offering the right of partial payment and other privileges in return for prompt settlement, is bringing results in Port Arthur, Texas. Portland, Ore., has opened up 700 accounts for receiving monthly installments of from 50c to $100 per month on delinquent improvement assessments. Another city has met the latter problem by employing a special man to contact the delinquent persons.

The Proposed Changes in the State Constitution

No. 2—Classification of Property

By HENRY BRANDIS, JR.
Of the Staff of the Institute of Government

THE PRESENT State Constitution requires that all taxes be levied by uniform rule and that all property not exempted by the Constitution be taxed at its true value in money. For various reasons this requirement is of major importance only in connection with the property tax. It operates to prevent any systematic classification of property for ad valorem tax purposes. The result is that the same tax rate must be applied to all classes of property taxed, whether such property be tangible or intangible, whether it be productive or non-productive, whether it be property which benefits the community or not.

Nevertheless, the uniform rule requirement has not forced completely uniform treatment of all types of property. The legislature has managed to grant exemptions and special privileges to certain classes of property which are rough, more or less arbitrary, hit-or-miss attempts at classification. The more important legislative efforts along this line are:

1. Corporate stocks, both domestic and foreign, are generally exempt from property taxes; though there are a few possible exceptions and there are also some legal questions relating to the exemption not yet definitely settled.

2. Certain municipal bonds are exempt from property taxes. The validity of this exemption has often been questioned, at least in part; but in practice virtually no municipal bonds of the type specified (and few others) are listed for taxes.

3. Owners of intangible property are allowed to deduct debts they owe from the tax value of such property.

4. The original growers of farm produce are allowed to deduct debts they owe from the tax value of such property.

Several other types of exemptions are permitted by the present Constitution, but in this discussion we are interested only in those exemptions and privileges which have been granted by the legislature without express constitutional authority. The results of these legislative measures are fairly clear: they give the owners of these types of property an advantage (however sound the reasons for so doing may be) over the owners of other types of property.

The results of this proposition can be easily illustrated. If I borrow money to buy a mortgage, I can deduct the debt from the tax value of the mortgage. But if I borrow money to buy an automobile, I must pay taxes on the full value of the automobile.

Incidentally, in connection with the farm produce item, it should be noted that the privilege of deducting debts depends not only upon the type of property owned but also upon the status of the owner. The farmer who raised the produce may take the deduction, but any other owner may not.

Extra-Legal Classification

It seems reasonably certain that these legislative measures, while perhaps not undesirable, are at best haphazard and do not form part of a logical system of classification. They have been supplemented to some extent by the activities of the local authorities in whose hands rests the power to discover and value property for tax purposes.

These local authorities, in various degrees, have: first, deliberately allowed undervaluation of some types of tangible property; second, deliberately allowed undervaluation of most intangible property listed for taxation; and third, deliberately allowed certain types of intangibles, which could have been discovered by persistent effort, to remain absent from the tax books.

It will readily be seen that these administrative developments, while serving roughly to arrive at some further classification, are even more haphazard than the legislative measures, because they vary enormously with the particular locality and the particular official.

We have, then, a situation in which the legislative and administrative departments, each having varied from, evaded and compromised with the uniform rule, are still unable to substitute for it an open system of classification. Toward this rough, semi-disguised system of classification the taxpayers have lent further active aid. They have quietly withheld much property, and particularly intangible property, from the tax books. In some of our counties much intelligent and persistent work has been done to discover this unlisted property and place it on the books, but taking the State as a whole far more taxable intangible property remains unlisted than is listed.

Riddling the Uniform Rule

It is difficult to say how much of this concealment is due to high tax rates and how much is due to the desire to escape all taxation. But the fact remains that under our present system a combination of legislature, administrative officials, and taxpayers has succeeded in riddling the uniform rule without substituting any logical classification system. The present system is a practical though illogical compromise which undoubtedly penalizes the taxpayer who is honest or who has the misfortune to have his assets discovered by the local authorities.

One of the proposed amendments to the State Constitution, to be submitted to the voters this fall, would permit the legislature, in its discretion, to classify property in any way it saw fit (up to the point where the courts might say the classification was too arbitrary to be valid). No one can predict accurately just what system of classification it might adopt if the amendment passes. We can only examine some general possibilities.

Elusive Intangibles

Perhaps the most likely possibility is that the legislature would require a lower rate of tax to be levied on intangibles. Suppose I have a savings account which draws 2% interest. If I live in a city the com-

bined county and city tax rate on the account will, under the present system, virtually wipe out my income therefrom. Consequently there is no incentive for me to keep a savings account. I probably will either discontinue it or neglect to list it for taxes. On the other hand, if I own an office building, I can, in normal times, recoup my taxes on it from the rents. This situation is frequently used as an argument that, as between these two types of property, a differential should be made in the tax rate in favor of the bank account. The principle urged is that intangibles bearing a fixed income should be taxed at a lower rate than other property.

It also is frequently argued that when such a lower rate is imposed much intangible property now concealed will be listed, and this increase in valuation will produce additional taxes which will equal or exceed the loss resulting from lowering the rate. It is doubtful if this would immediately be true in North Carolina, as the habit of concealing intangibles is widespread and well-rooted. Over a period of time, it probably would be true. Thus the probability is that temporarily there would be a partial shift of the tax burden from the owners of intangibles to other taxpayers, while in the long run the burden would simply be spread out among a larger group of owners of intangibles, many of whom now conceal part or all of such property.

Of course, this is but one of a number of ways in which the legislature might conceivably classify property in accordance with its supposed ability to pay; and each method would be accompanied by a temporary or permanent shift in the tax burden. To mention one such possibility—a distinction might be made between realty used for commercial purposes, on the one hand, and realty used for residence or farming purposes, on the other.

Aid for Socially Desirable Items

A second major possibility is that the legislature might strive to use the classification power to encourage objectives considered by it to be socially desirable. Thus concessions might be made in favor of land involved in soil conservation projects, or land occupied by growing timber or land used as private wild life preserves.

The power might also be used to encourage ownership of small homes, but this will not be given detailed discussion here. A separate amendment, primarily intended for this purpose, will be discussed in a subsequent article. Should the classification amendment be adopted and the homestead amendment defeated (a somewhat unlikely possibility), suffice it to say that the results sought by the latter could probably still be accomplished under the former.

Certainly no one can accurately predict the ways in which the legislature might undertake to classify property in order to effectuate socially desirable purposes. Consequently, the extent to which the local tax burden would be shifted cannot be predicted. However, we do know that any such classification would result in some shift of the tax burden. It can hardly be argued that any classification based on this principle would result in the listing of much property now concealed. In this respect this type of classification differs greatly from the type which would make concessions to intangible property.

In passing, two other principles which might creep into any system of classification adopted by the legislature may be mentioned: first, it might attempt to base tax rates, to some extent, on the amount of protection given to various types of property by local units; or second, it might attempt to use tax rates for the encouragement of particular industries or even of all new industries. In either case, or in the situations already mentioned, the classification might be arrived at by granting exemptions instead of by varying the tax rates.

Pro and Con

Most of the arguments commonly urged for classification have already been stated or implied. They are that the uniform rule prevents proper consideration of ability to pay; that it does not allow proper use of the taxing power to encourage conservation of natural resources, home ownership, and other desirable objectives; that it does not allow proper consideration of the protection afforded various types of property; that it requires double taxation if representative property is taxed; and that classification will put more intangible property on the tax books. Further, there is the argument that the uniform rule will prevent complete consolidation of local units of government. In North Carolina, however, the consolidation problem is a separate issue which should probably be faced on its own.

The arguments commonly urged against classification are that it is impossible so to classify property that the properties in each class will have equal ability to pay, the same amount of protection or the same amount of social desirability; that classification will not necessarily result in listing of more intangibles and that, even if it does, revenues may still decline or a heavier burden be thrown on other property; that there is double taxation if representative property is taxed at all, the difference being purely one of degree; and that the authority to classify gives the legislature unlimited authority to use the taxing power for purposes purely political, with much unjust discrimination and much haggling over the proper method of classification as the inevitable result.

The most important issue raised by these arguments, so far as North Carolina voters are concerned, boils down to this. The voter must choose between: first, the present system, under which the legislature has been prevented from adopting a logical system of classification but has not been inhibited from violating the uniform rule, and under which legislature, local officials and taxpayers have arrived at a rough but known practical classification; and second, the proposal, which would open the way for much that is desirable or undesirable in the way of classification, dependent upon the common sense, governmental knowledge and political integrity of the legislature.

In other words, North Carolina's political temperament being what it is, the classification issue becomes primarily an issue as to whether the voters, in the interest of a more logical tax system or in the hope of a system more favorable to their personal situations, will trust the legislature with this increased power.

Securing Public Deposits

By JOHN A. ORRELL

DID your County ever have any funds in a bank that closed?

Did the County collect in full or did it lose a large sum?

In other words, were the deposits fully secured as required by law? Or did the officials of the County feel that it was their duty to bolster up an unsound bank with the result that the bank eventually failed with large deposits of public funds?

It has always seemed to me that the failure of a bank is inevitable when it reaches the point of asking County officials to issue notes or bonds for the purpose of securing funds to be deposited in the bank to "tide them over."

The experience in New Hanover County is that no County funds have ever been lost by reason of bank failures.

In one case, some years ago, we held a surety bond covering our deposit in a certain bank. This bond expired at 12:00 o'clock noon on a certain date. Thirty days prior to the expiration of this bond a written notice was sent the bank (after verbal communications concerning the matter) requesting that a renewal of the bond be secured before the expiration of the old bond and advising them that if the bond was not renewed it would be necessary for us to withdraw the funds.

At about eleven o'clock on the date fixed we called at the bank, and as the bond had not been received, we demanded the money and were given a cashier's check. We carried this check to another bank and requested a certificate of deposit with the statement, "If you don't get your money by 12:00 o'clock, don't look to us." The cashier said, "Wait a minute." He then went to the clearing house which refused to clear the check at that time of day. We then returned the cashier's check to the bank which had the deposit and demanded the cash or a check on another bank. We again carried the check to the second bank and requested a certificate of deposit with the same statement as before and were again requested to wait. The cashier then went to the bank on which the check was drawn, got the money, gave us the certificate of deposit and the transaction was closed. This bank later went out of business.

Mr. Orrell is president of the State Association of County Accountants.

In another case we accepted from the bank as security for County funds the bonds of a certain municipality (with the approval of the Local Government Commission) at 60% of their par value. These bonds later declined to something like 42% but as they declined we demanded of the bank additional securities. The representative of the bank took the position that we would not get in any trouble with the "Local Government Commission" for holding the bonds at 60 even if something should happen to the bank. We reminded him that we were not worrying about the Local Government Commission but that our duty was to protect the taxpayers of the County.

This bank later closed with $130,000.00 of County funds on deposit, but the County suffered no loss.

No County funds are ever deposited in any bank without security which not only meets the legal requirements of the Statutes but which is in fact adequate, and the banks coöperate with us fully.

Does your County pay interest on loans or collect interest on deposits?

Formerly New Hanover County collected four per cent interest compounded quarterly; this was later reduced to three per cent which meant that the County paid for the security. The rate has gradually declined to 1½%.

During the past eight years New Hanover County has collected more than $150,000.00 in interest, about evenly divided between interest on deposits and interest on securities owned by the County, as follows:

Year Ended June 30	*Interest on Deposits*	*Interest on Bonds*	*Total*
1928	$8,307.31	$5,855.00	$14,162.31
1929	9,677.20	5,405.00	15,082.20
1930	13,654.06	5,095.00	18,749.06
1931	16,302.27	6,030.00	22,332.27
1932	12,022.15	10,085.00	22,107.15
1933	6,107.09	13,957.50	20,064.59
1934	4,555.43	14,282.50	18,837.93
1935	3,984.33	14,838.75	18,823.08
	$74,609.84	$75,548.75	$150,158.59

It will be seen that as the bank interest rate declined the funds were used to purchase bonds, but we have never bought any bonds other than those issued by New Hanover County and the State.

Fortunately this County early adopted the policy of levying a tax sufficient to build up the necessary sinking fund to pay the bonds at maturity; this of course enabled us to raise the fund to the point that the interest is quite worth while.

By no means all of the interest collected was for account of the sinking fund, however; for the year ending June 30, 1935, the amount of $3,984.33 was divided as follows: Sinking fund $2,199.11, other funds $1,785.22.

Our ability to have other funds on deposit at interest is largely due to the fact that we have always made an effort to finance the County to October 1st, the beginning of the tax collecting period, and when the 1927 laws were enacted we did not change this policy. As a consequence this County has not borrowed any money for any purpose since October, 1927.

We believe the funds of any County can be preserved if the officials follow business methods and keep in mind at all times the fact that their first duty is to the taxpayers who put them in office and pay their salaries.

MANY years ago, according to a story which is current in the western part of the state, one of the justices of the Supreme Court was orally examining applicants for licenses to practice law. He turned to a young man whose answers theretofore had been marked by their shrewdness if sometimes lacking in legal acumen. "Is a marriage contract," asked the justice, "based upon a valuable consideration or a good consideration?" The latter-day disciple of Blackstone pondered the question a moment, then answered, "Well now, judge, I'd say that depends. Yes sir, I'd say that depends on what you're agittin'."

* * *

God Save the Court

Stories like native flowers often lose much when torn from their natural environment. One of these concerns a judge and a sheriff who had been bitter political enemies for years. On more than one occasion each had been outspoken in his denunciation of the other. On the first day of the judge's first term in his county, a throng crowded the courtroom expecting to see the "fur fly" when the judge and sheriff clashed. They were not disappointed. Almost curtly the judge ordered, "Open the court, Mr. Sheriff." Many thought they detected a note of sarcasm in the judge's voice when he said "mister." The sheriff arose to repeat the familiar formula: "Oyez! Oyez! This Court is now convened for the dispatch of business—" then sighing as one in hopeless despair, he continued, "God save the State." Everyone listened intently as the sheriff turned to sit down. Possibly he noticed the snapping eyes of the indignant judge, but if so he tempted the fates by continuing in a drawl which was an excellent imitation of a slow-spoken southern negro, "—An' dis 'onorbul cote." The incident had passed and the calendar was under consideration before it dawned upon most of those present that the sheriff had, with rare finesse, added insult to injury and—"got away with it."

* * *

Father and Son

When an attorney appears in a case before his father as the presiding judge, people often watch with interest to see whether the judge will be affected by the kinship. In tribute to our bench it must be said that in this situation usually the son suffers more than the impartial administration of justice. In one such case it is said that the son brought a land suit in which the damages demanded were tremendous. The father, after careful consideration, ordered non-suit. That night a brother at the bar found the young lawyer, somewhat in his cups, leaning against the courthouse door. Not having heard of the non-suit, he asked, "Joe, how did you come out with your timber case?" Before answering the son straightened up as one about to deliver a learned and profound opinion. With dignity and proper restraint, but in measured words, he answered, "To the disgrace of the bench, sir, I was non-suited. I have but this to say by way of comment: I am no stranger to the facts that his knowledge of the law is limited, severely limited, and that he will stoop to unspeakable acts, but this recent outrage at his hands surprises even me." Pausing, he added hastily, "Understand, sir, my words are directed at the judge. For my father I have the greatest respect." Whereupon, he slowly sank to the sidewalk and lay there quietly, completely oblivious of the judicial system or, for that matter, of anything else.

Court House Chaff . . .

Family fights and feuds have become increasingly rare, but only a few years ago one of them took place in one of our rural communities. In due time the case came up for trial, and the brother of the chief offender was called to the stand. The Solicitor asked him to tell what had happened. He began, "We uns and the Barkleys bin havin' trouble for years. We all went over to thu Barkleys to have it out. Them Barkleys just about ruint us. Next day my brother Sam come home from the Ahmy. Sam's much of a man and ef we'd a knowd he was comin' we'd waited fur him in the fust place. When he saw thu fix we wuz in he 'lowed how he could whup all thu Barkleys by hisself. Well, Judge, I wuz thu only one what could travel so I went 'long with him, knowin' I'd enjoy it. When he wawked into thu house they all riz and stahted fur him. He raked at Zeb with a shoe-knife and laid him open like they wuz a zipper on him. Then he grabbed a fah-dog outin' the fah-place and socked Zeke ovah the haid. 'Bout that time thu ole man retch fur a stick o' fah-wood and Sam kicked him plumb into the kitchen. Then Sam tuk the pokah and wropped it around Eph's neck—Eph wuz sorta poly frum th' othuh argyment and kinda slow 'bout gittin' goin'. An'," the witness paused for breath, "I'll swah, Judge, I didn see nary 'nothuh thing, fur 'bout thet time I tuk off fur home to take them thu news of thu victry!"

* * *

Professional Jealousy

A Highway patrolman made an arrest in a sparsely-settled section and went immediately to an old magistrate's house to procure a warrant. "No, son," said the magistrate, "I ain't actin' any mo'. 'Bout three munths ago I tried a murdah case, and seems like that young upstaht of a judge wuz kinda jealous. He sed sumthin' 'bout me resignin' an' I got mad an' quit. I wish I could 'commodate yuh, but it's like I told my ole 'oman th' uthuh day, 'In this worl' of our'n, yuh just got to make 'lowances fuh thu weakness of human natchuh.'"

* * *

A Fog Story

Out of the past there often come to us stories of rich, rare, and sometimes racy, characters. Often, like the beloved Zeb Vance, their spirits are eternal because of the stories that cluster about them. One of these men, an inferior court judge in one of our small communities, is as full of surprises as a runaway marriage. Years ago it is said that when he announced for the county Board of Education, he addressed the convention, "Gentlemen, I have fought all my life for our party. I'm proud of it and proud to anticipate in this convention. I'm here to announce myself as a candidate

(Continued on page twenty-one)

«Judge, I'd Like to Get Off»

A Simple Way for Each Citizen to Help Improve the Jury System

By DILLARD GARDNER

of the Staff of the Institute of Government

JUDGE, I'd like to be excused from the jury. My wife is at home sick, and she is there by herself now."

"Judge, my health has been bad for some time. I really don't feel up to serving. Here's a paper from my doctor telling about my trouble."

"Judge, it's a mighty busy time on the farm. The weeds are taking my corn and cotton, and nobody to help me but my little boy."

A new term of court has just convened, and after the call of the jury panel the judge has given the jurors an opportunity to offer their excuses. The requests above are fairly typical. Sometimes tragic, sometimes almost ridiculous, they always are glimpses into the workaday life of our people, and often reveal an almost instinctive reluctance to serve on a jury. "Judge not that ye be not judged" is an attitude so general that it might even be called traditional. "An eye for an eye and a tooth for a tooth" may be scriptural, but John Q. Citizen had much rather someone else would do the trying and convicting and let him go ahead with his job, business or profession. As an abstract proposition he readily admits that every citizen ought to serve on the jury when called unless there is some very exceptional circumstance, but as soon as he is summoned by the Sheriff he quite often begins to look around for a plausible and convincing reason why he should not serve.

It is a rare exception when no member of an entire panel of jurors asks to be excused. This reluctance on the part of respected citizens is so general that whenever a judge or lawyer is called upon to address a civic club luncheon or other gathering, he frequently selects the duty of jury service as his topic. Yet, despite these frequent "calls" to the "discharge of the duties of a good citizen," the abler and more influential men in every community often avoid jury service consistently.

Recently a substantial young business man remarked, "Well, the Sheriff finally got me. I've been voting and paying taxes twelve years, but I have never had to serve on the jury. How can I get off?" He followed with a list of "reasons" why he could not serve on the jury. Actually, serving was the last thing to be considered.

In each of our one hundred counties every year there are from three to fifty weeks of Superior Court, practically all of them using juries. In most jury-weeks approximately thirty jurors will be used; this allows the court to have two full juries at all times, the six extras being used to take the place of jurors who are excused in a particular case. If there were only one jury-week each year in a county, approximately three thousand jurors would serve annually in the Superior Courts of the State; actually many times that number serve. This number takes into consideration only the petit, or trial, juries; in addition to these a grand jury of eighteen members is serving at all times in each county, and in most counties a new grand jury is drawn every six months. It is probable that more than three thousand citizens each year serve on the grand juries in North Carolina. Obviously our judicial system demands jurors in large numbers. To enable our courts to function with maximum efficiency they must have jurors of a high type.

To remind citizens that it is their duty to serve as jurors when summoned is apparently not enough. Why?

The natural reluctance to judge and condemn publicly one's fellowman and neighbor causes many to avoid jury service. Egotism affects others; many, whether they so express it or not, are inclined to feel that almost anyone can serve on a jury satisfactorily but that they are the only ones who can do their own work. They adopt a let-George-do-it, I'm-busy, attitude. The profit motive influences others; if a man's customary work yields substantial returns or if he is in a "rush season," he resents being called from his work to serve on a jury at $2 or $3 a day. A natural distaste for the slow-moving, deliberate procedure of the courts influences many business men; they often speak of "wasting a week serving on the jury" or "loafing around court as a witness." Closely akin to these are those restless men who enjoy getting things done; when such men review a week's activity on the jury they often feel that they accomplished very little. In proof of this they tell of the long periods during which they sat waiting to be called or during which the jury was excused while the judge heard some matter. With other men it is a vague feeling of fear that they may do some man an injustice, that they will be embarrassed by the judge or a lawyer who does not fully appreciate that the courtroom is an environment in which most citizens feel awkward and ill-at-ease, or that some action taken as a juror may make an enemy of a party or witness and result in adverse criticism, or worse, long after the case has been tried.

Few men, of course, ever analyze critically their real reasons for not wanting to serve on juries. Many respected citizens are often surprised when they do so. They often discover that they had not *thought* about it but had merely *felt* about it and that the reasons for their feelings and emotions are scarcely sufficient to justify them in failing to perform conscientiously one of the most necessary and most important duties of a citizen. If there are times when we are tempted to be unduly critical of the administration of justice in the courts, fairness demands that we remember the extent to which the general citizenry, particularly as willing jurors and witnesses, can, at any time they are willing to pay the price in personal inconvenience, improve the quality of justice which we mete out among men.

The Widow's Mite

--Another in the Series of Studies of «Woman and the Law»

By HARRY W. McGALLIARD
of the Staff of the Institute of Government

THERE be three things highly favored in law—life, liberty, and dower." Thus wrote Sir Edward Coke, first Lord Chief Justice of England, in the early years of the seventeenth century. After the shabby treatment accorded women during marriage, one would think that the law could well afford to favor the widow. But despite Coke's chivalrous language, a widow was not overcome with blessings even in the enjoyment of dower.

Dower, the rights of a widow in her husband's lands, is not very different today from the dower of Lord Coke's period. There have been eras of change and experiment, but in 1868 the Legislature restored dower to practically the same status as existed in colonial days.

Under the Statute of 1868 and subsequent statutes, a widow is entitled to use for the remainder of her life *one-third* of all the lands her husband may have owned at any time during marriage. Contrary to the popular belief, the widow does not become absolute owner of even the one-third given to her. In short it is little more than a lease for life, requiring no payment of rent. Naturally, *one-third* is interpreted as one-third in *value, not* in *quantity;* otherwise it would be impossible to make fair and uniform assignments of dower property.

Property Subject to Dower

The widow is entitled to dower *only* in lands which would descend to the husband's heirs if he had any. This, of course, excludes any lands which the husband holds for life or as a trustee.

Although statutes since 1784 have directed, and since 1908 have required that the dwelling house be included in the widow's third, unless she agrees otherwise, this was customary long before there were any statutes covering the subject. This does not mean that the widow receives the dwelling in every case, or the dwelling plus a third of the other lands. She is entitled only to a maximum of one-third. If the dwelling house is worth one-third of all the husband's lands, she receives it alone and nothing more. If it is worth *more* than a third, she is entitled only to a part of the house—enough rooms to make up a third.

Dower need not be assigned in each and every different tract of land. It is quite proper to assess the total value and then award the whole one-third in a single tract. To do otherwise and, for example, assign a one-third interest in a farm, a mill, a city lot, and a cow pasture might prove to be very awkward both for the widow and the husband's heirs.

Use of Dower Property

As already indicated, the widow's dower ownership, far different from absolute ownership, is more comparable to a lease for life, requiring no payment of rent. Hence, if she attempts to sell her dower interest, she sells only a lease for the length of her life.

With this comparison to a lease in mind, it is easy to perceive other restrictions likely to be imposed on a widow. She must do nothing that will impair the permanent value of the property. She cannot cut timber purely for purposes of sale. She may cut enough to provide firewood, build fences, and repair buildings. She may clear a reasonable amount of land for cultivation if necessary, to make the land yield crops to support her. What is "reasonable" is left to the determination of a jury, and juries are likely to allow widows considerable leeway. In other respects the widow's conduct is regulated in much the same manner as that of a tenant.

Assignment and Allotment

The Clerk of Court on application appoints a jury of from three to twelve who meet on the lands in question, determine a third, and lay off boundaries. If either party is dissatisfied, the case may be appealed to the Superior Court. However, if there is enough personal property in the deceased husband's estate to pay his debts, the widow and heirs may agree on the dower among themselves.

A husband cannot deprive a wife of dower by willing all his property to other people. True, the widow may abide by the terms of the will if she wishes, taking as little or as much as her husband has cared to leave her. But if she is dissatisfied with the provisions in the will, she may enter her objection within six months. When she does this, she is treated as if no will had ever been made.

The right of a widow to dissent to her husband's will dates from 1784, but prior to 1848, the widow had to appear personally in open court to voice her dissent. A widow too ill or too feeble from old age to travel to court, or an insane widow, was without any remedy if unprovided for in the husband's will. In 1848, the Legislature made provisions for such persons to act through an attorney or guardian. Since 1868-9, all adult widows have been permitted to dissent by attorney.

Release or Bar of Dower

The widow's right of dower is by no means absolute. She may voluntarily surrender the right, or she may forfeit it.

She may surrender her rights by (1) an agreement with her intended husband before marriage, (2) a separation agreement after marriage, (3) or by joining with her husband in signing any deeds or mortgages he may make.

After the Supreme Court ruled in 1888 that neither the murder of her husband nor conviction of being an accessory before the fact would cut off the widow's rights, the Legislature immediately passed a law making such acts a bar.

Since 1893, dower will be cut off if a wife willfully abandons her husband and refuses to live with him and there is no reconciliation before his death. By the statutes of 1837, 1871-2, and 1893, adultery will also bar a wife's right of dower if there is no reconciliation before the husband's death. An absolute divorce

has always cut off all dower rights, but a divorce from bed and board has worked this result only since 1893 and then only in case the divorce is secured by the husband.

Dower—the Best Solution?

Most states have abolished dower in the form that it exists in North Carolina today. Many teachers of law and members of the bar have suggested substitutes for dower in this state. It is thought that the mere life-time use of one-third of the husband's lands does not constitute a fair distribution. The widow does not necessarily receive even the use of *all* of the dwelling house —the home which in many cases she has worked as hard, and helped as much, as her husband to buy or build. Naturally the children should not be overlooked. But even when there are no children, the husband's land does not go to the widow but rather to other relatives of the husband. Unfair perhaps, many have so charged it, but the Legislature has not changed it. The customs of centuries are not easily over-turned.

Proposed Administrative Court

By JULIUS C. SMITH
President of the State Bar

OVER a period of years there have been created from time to time by Act of Congress various bureaus, commissions, and courts for the purpose of handling controversies between the United States and its citizens, and for the administration of certain laws arising under the various administrative acts. So many of these bureaus and commissions have been created that it is difficult to maintain an accurate list of them. For the most part, they are well manned and honestly administered under the system, rules, and regulations provided for their conduct, but, due to the system and not any fault of the personnel it happens that in most cases these bureaus and commissions are the Judge, jury, prosecuting attorney and one of the parties litigant. Moreover, the tendency has been for each Congress to add to the total number.

There has grown up in this country a feeling that it is hard for the citizen to believe that he is getting or can get substantial justice in controversies with his government under such a system. As a result, the American Bar Association caused the appointment of a Special Committee on Administrative Law some three years ago to undertake a study of the situation with the thought of suggesting a remedy. This thought and study produced a bill which has been approved by the Executive Committee of the American Bar Association and which was introduced in the present session of the United States Senate as Senate Bill No. 3787 and referred to the Committee on Judiciary. The Bill is entitled "A Bill to Establish a United States Administrative Court to expedite the hearing and determination of controversies with the United States, and for other purposes."

The Court provided for is designed to absorb and take over the existing boards and commissions, including their personnel, except the Interstate Commerce Commission and the Federal Trade Commission. It provides for a court of well trained specialists in the particular fields, consisting of approximately forty Judges, with both trial and Appellate Divisions. It is designed to insure to the American citizen a tribunal in which his controversies with the Government can be fairly tried and reviewed. It is also designed to eliminate the difficulty arising in connection with tax appeals. Under the present system appeals from the United States Board of Tax Appeals may go to any one of the ten United States Circuit Courts of Appeal. The result is that there are innumerable conflicting decisions between the Circuits, causing innumerable appeals to the Supreme Court, which, as a result, has often been referred to as a glorified Board of Tax Appeals. Under the proposed Administrative Court these conflicting decisions could not and would not occur, and the appeals to the Supreme Court would be minimized.

The Court, as stated above, would have a Trial and an Appellate Division, and would be perambulatory in nature. This perambulatory feature is designed for the convenience of litigants and to curb, as near as may be, the tendency toward too much centralization of power at Washington.

Lawyers and laymen as well are urged to study this Bill, and after having done so, to express their views in connection therewith to their respective Senators and Congressmen.

OFFICIAL STATE BAR NEWS AND VIEWS

Editorial Committee: Julius C. Smith, President; Henry M. London, Secretary; Charles A. Hines, Councillor, and Dillard S. Gardner of the staff of the Institute of Government.

Our Inactive Local Bars

Recently detailed inquiries as to the organization and activity of local bar groups were sent to an established attorney in each of the hundred counties. To date fifty-four of these have been answered, and others are still trickling in. Although later returns may change the picture, those in hand indicate clearly that only in the most populous centers is the bar organized and functioning as a group. The following

table indicates in outline the status of local bar organization and organized activities:

No Bar Organization	10
County Bar Organizations Only	39
Other Bar Groups	5
No Calendar Meetings	3
Calendar Meetings Only	37
Other Meetings	14

Although ten counties reported "no bar organization," in seven of these the bar as a group meets to prepare the civil calendar. In fifty-one of the fifty-four counties there is a nucleus organization from which an active county bar organization might grow. The other three counties have only from two to six lawyers, and the need for a local bar organization has never been felt. In five of the most populous counties there are junior bar organizations of the younger lawyers, and in one county there are city bar organizations in each of the two large cities of the county.

In the sparsely populated counties where the lawyers are few, lawyers continue as professional individualists. As the areas become more populous and the number of lawyers increases, a feeling of professional, group consciousness emerges and gradually takes form in bar organizations, which usually combine social, professional, and civic purposes. In many of the smaller counties there previously have been organized groups which met regularly, but which drifted into inactivity because of poor attendance. In these places they report "lack of sustained interest," "no enthusiastic leading spirit," and "difficulty of maintaining a high standard of programs." Even the "calendar meetings" are often poorly attended, and in some of the smaller counties calendar committees with the aid of the Clerk do a large part of the work in preparing the calendars. In six of the larger counties calendar committees of the county bar prepare the civil Superior Court calendars, but often other members of the bar are present to assist.

In thirty-seven of the fifty-four counties, the lawyers in the counties meet together only when necessary to prepare civil calendars. Special meetings called by the head of the local bar are sometimes held, but these are rare. In the fourteen counties in which other meetings are held, only two or three undertake frequent, regular, program meetings. In two of the fourteen counties meetings are held twice a year and in eight counties an annual banquet meeting is usually held. Few of the county bars meet oftener than quarterly, but the junior bars usually meet once or twice each month. With very few exceptions the lawyers of the several counties meet as a group only occasionally, and at such times the social features of the meeting frequently predominate.

Until the coming of the State Bar, all bar groups in the state were in the nature of voluntary associations. The trend of recent years has been toward unified, coordinated, integrated, and self-governing bars. The integration has begun with the State as the unit, every practicing lawyer now being a member of the State Bar. To achieve fully its highest purposes the State Bar needs the assistance of active, organized local bar groups, and it may be that we are now entering upon a new era in the development of local bar organizations.

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Case Comment

Bank Failures—Public Funds—Defaulting or Delinquent Custodian—Pasquotank County vs. Commissioner of Banks (to appear in Advance Sheets for March 13) held that C.S. 357 prescribing a 12% penalty on a defaulting or delinquent public officer is inapplicable to a bank acting as county financial agent. The County was allowed the full amount of its claim, as the Bank paid out in full, with interest at 6 but not at 12%.

Defaulting Official—Suit on Bond—Reference—The county sued its former tax collector and his surety for alleged defalcations involving tax shortages, unsettled taxes, and false land sale certificates. The Court, finding that the action involved taking a long account of 500 items, ordered a reference. Held: Defendant's denial did not constitute a plea in bar so as to prevent a compulsory reference. The Statutes relating to trial by referees serve a useful purpose and should be liberally construed.—Haywood County vs. Welch (to appear in Advance Sheets for March 13).

Elections—Contests—Illegal Vote—The result of an election, the Court held, will not be disturbed nor one in possession of an office removed because of illegal votes received or legal votes refused, unless the number be such that correction would show a majority for the contesting party. The case also affirms the holding that absentee voting is permissible in municipal elections.—State ex rel. Phillips vs. Slaughter (to appear in Advance Sheets for March 13).

Elections—Educational Qualifications—Duty of Registrar—Allison vs. Sharp (to appear in Advance Sheets for March 13) affirms the constitutionality of C.S. 5939, requiring voters to prove to the ability of the Registrar their ability to read and write any section of the Constitution, passed in 1901 to carry into effect the provisions of Art. 6, Sec. 4, of the State Constitution. The Constitution gives the General Assembly the right to enact this legislation, the Court ruled. It is a reasonable provision, and the Registrar who passes on other qualifications is the logical person to enforce it. Moreover, it is not class legislation because it applies to all citizens of the State.

Estates — Preferred Claims — — Taxes on Life Estate — Special Assessments—Riggsbee vs. Brogden (to appear in Advance Sheets for March 13) holds that taxes levied upon a life estate prior to the death of the life tenant come within the meaning of C.S. 93, and are "third class" obligations entitled to preferential payment out of deceased personalty. But not charges for water and gas connections nor street and sidewalk assessments, which are not taxes levied against the owner, but charges upon the land, laid with reference to supposed benefits accruing thereto. In this case, if the land is not sufficient in value to pay the assesments in full, the deficiency is not collectible out of other properties belonging to the land owner.

Police Power—Compulsory Taxi Insurance—Fourteenth Amendment—Raleigh's ordinance requiring "for hire" operators to secure liability insurance or enter into bond with a personal or corporate surety was upheld, in Watkins vs. Iseley,

209 N. C. 256, as a valid exercise of the police power, expressly authorized by Chapter 279, Public Laws 1935. Such an ordinance does not violate the 14th amendment, it was held, the operation of vehicles for gain being a special and extraordinary use of a city's streets, which it has the power to condition by ordinance uniform upon all coming within the classification.

Tax Foreclosure—High Bidder—Effect of Re-sale or Payment—The high bidder at a tax foreclosure sale attempted to enforce the sale and be made a party to the original action after (1) the bid was raised, (2) re-sale ordered, (3) taxes paid by owner, and (4) non-suit taken by the county. Held: The high bidder is a preferred bidder with no rights in the property in law or equity until the bid is accepted and confirmed by the court, and the order of re-sale constituted a rejection of his bid and a release of his liability thereunder. — Richmond County vs. Simmons, 209 N. C. 250.

Wrongful Death — Proximate Cause—Insulation of Passive Negligence—The city allowed piles of sand intended to be spread on an unpaved sidewalk to remain at intervals along the walk for two months. A pedestrian stepped into the street to walk around one such pile, and was killed by a speeding and negligently operated auto. Held: Non-suit against the city affirmed. Death was not the natural or probable consequence of the city's alleged negligence. The independent, intervening cause *insulates* the primary negligence, and is deemed the proximate cause of the injury.—Newell vs. Darnell and Winston-Salem, 209 N. C. 254.

The same result was reached in the case of Banks vs. Joyner and Weldon, 209 N. C. 261.

Wrongful Death—Governmental and Private Functions—Park Swing—The injuries which resulted in the death of the Plaintiff's intestate were received while using a swing in a city park. Held: As a general rule a city is liable for negligence in the performance of a corporate but not of a governmental function. The facts alleged were not sufficient to determine whether this was a governmental function.—White vs. Charlotte (to appear in Advance Sheets for March 13).

Building Safer Roads and Streets

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By T. F. HICKERSON

CONSIDERING the number of vehicles which pass each other in opposite directions on the open road, the statistical chance of any two colliding is infinitesimally small. In the aggregate, however, head-on collisions make up a very serious part of the total; and among the earliest of highway improvements was the widening of the pavements

Center-lining for safety on curve and straightaway.

to increase passing clearances. Demands for greater traffic capacity have been met by widening to three lanes, four lanes, and more, but vehicles using the center lane or lanes must still pass close to opposing cars and, in addition, face the added danger of being crowded by cars on their right.

A recent study in Massachusetts showed only 54 per cent as many fatal non-intersection accidents per million vehicle-miles (excluding pedestrian accidents) on *divided highways* as on ordinary *four-lane highways*, and only 37 per cent as many as on two-lane roads.

Three-lane highways, due to the questionable right-of-way in the middle lane, are less satisfactory than four-lane highways. In new construction, if funds are insufficient to finance the entire four-lane width, the two outer lanes might be paved for main traffic lanes and the two inner lanes lightly paved until funds for full pavement become available.

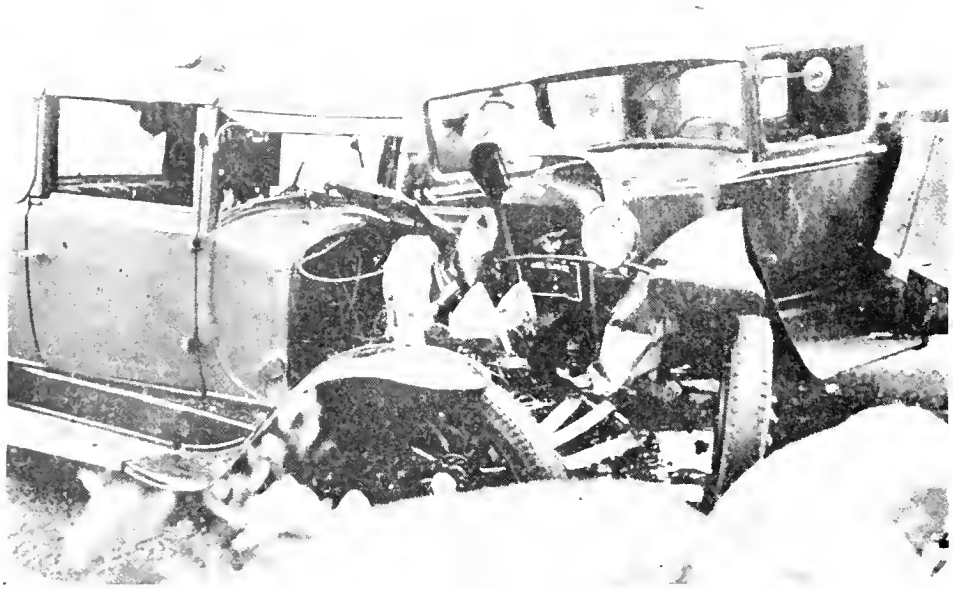
The painted center line, which is now almost universal on curves and on hills, especially where sight distance is impaired, is effective and popular, but it cannot prevent the careless motorist from crossing over to the wrong side at times, with possible serious consequences.

To keep opposing cars safely apart, it is clear that there must be some physical barrier between them. The *safest and most ideal highway* must be built with two separated roadways, each for traffic in one direction only. Each must be at least two lanes in width to accommodate fast and slow traffic in different lanes. But until vastly greater highway funds are available, this design will probably be limited to highways on which the volume of traffic justifies the expense of four-lane construction.

An incidental but important advantage of the dividing center strip is that it may be planted to serve as a screen against opposing headlights, thus removing permanently one of the greatest hazards of night driving. At intersections where it has not been feasible to separate grades, furthermore, it offers a very desirable "dead" area between the opposing traffic streams where a crossing or turning vehicle may remain protected until a favorable opportunity occurs for entering or crossing the traffic on the far side of the roadway.

The problem of railroad-highway crossings is similar to that of highway intersections, in that only a separation of grades can make safety sure, especially with the development of the new high-speed trains. There is a growing sentiment in favor of closing many existing crossings and providing more adequate protection, or grade separation, at the others on the theory that modern motor-vehicle traffic can well afford the slight expense and inconvenience of detouring a mile or more for the advantage of greater protection. For protection of the remaining crossings where grade separation is not practicable, the standard flashing lights or wig-wag signals, put into operation by approaching trains, are becoming more general on the rural highways.

It has been estimated by Mr. Ford of the Rock Island Lines, that there are now 235,800 highway-railway grade crossings in the United States, of which 30,000 should be separated, 100,000 need protection, 45,800 require but minor attention, and 60,000 might be closed



They Don't All Die-- But Lots of Them Wish They Had

In remembering the 36,000 persons killed on our highways every year, we tend to forget the hundreds of thousands who weren't killed—the ones who "got off" with merely a scratch or a cut, a broken arm or leg, a face hideously mutilated, or a shattered pelvis. Let J. C. Furnas, the author of —*And Sudden Death*, describe one of those who didn't die.

"Two passengers, bleeding, unconscious, were loaded into an ambulance in quick time. They were on the point of driving away when the policeman discovered the third.

"He was doubled up like a broken stick and thrust halfway through the narrow back-window of the wreck, his head between his knees. They didn't dare try to unbend him till they reached the hospital. He was still alive and conscious. He proved that by stealing the policeman's gun out of its holster and trying to shoot himself while he still had the chance. He knew his back was broken and he'd better die at once before they did anything about it.

"The ambulance surgeon also knew it was broken, but when they cut the clothes away, even he stepped back and caught his breath. It was one of those cases that internes pour into the horrified ears of first-year students. The spine was snapped clean, bent at an acute angle and its bare end protruded from a rent in the skin like the stump of a horrible, bony tail.

"Thanks to doctors that man is still alive. The doctor would start to tell you that anybody with a broken spine is lucky to live—but then that doctor would check himself and wonder what luck means to his patient. He has been operated on 25 times. He is always in acute pain and paralyzed from the waist down. Last year they sat him up in a chair and let him play poker all evening with some old cronies, as he used to do before they sneaked across the white line on the curve. He cheered up so that they almost forgot he was half a dead man. But they remembered again when one of them, feeling something sticky underfoot, looked down and saw a pool of blood spreading under the table. All evening a heavy man, seated in a heavy chair, had been crushing his foot into an oozing pulp and he had never felt it.

"Eventually, in spite of all medical precautions, they the victims who live have a fair chance of dying after months or years. Their excretory organs are paralyzed too, and an infection of kidneys or bladder may help them out. Or an infected bed-sore, a huge patch on the end of the spine where the flesh sloughs away from the bone, will turn the trick. But that rescue always comes too late. However long they last, it has been an eternity."

—Reprinted by permission of the publishers from *Sudden Death and How to Avoid It*, by J. C. Furnas (Simon and Schuster, New York).

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Problem Box

Local officials and citizens are invited to send in their solutions to the knotty problem below; also to outline any governmental problems perplexing their city or county.

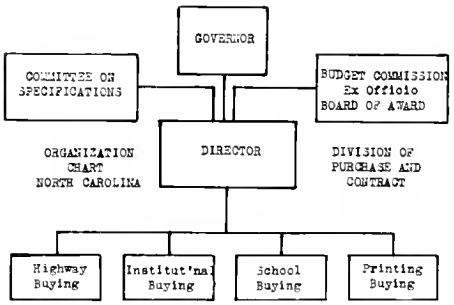
The Problem. The *unwanted man*, frequently with a wife and children, unemployed and often unemployable, dependent on charity, passed from county to county like a human football, lest he acquire a settlement and become a public charge.

Illustration (actual case). Family originally from County A. Moved to another state but deported back to County B. Stayed short time but not 12 months. In County C 2 or 3 months. Next appeared in County D, probably sent there by C. Moved to E after 11 months and 25 days. E claims D bundled them up and bought them bus tickets. Almost a year has passed, and E wants to know "any possible way" to put this family "on D or anywhere else."

The Law: 12 months' continuous residence required to acquire a settlement for purposes of poor relief. C. S. 1342-3.

Questions. 1. A state or local unit admittedly may sentence vagrants to the work house, but is it legal in a free country to tell men they can not go to a certain place because they haven't the means to support themselves? Granted that the unit has no obligation to support non-residents, may they not still go there to search for work, or to starve, if they wish?

2. Aside from the legality or social justice, is the "closed door" policy economically sound from a national or even a state viewpoint? Does it prevent the jobless from migrating to sections where work may be available in their line, though not in others, with an evening-up which would reduce the relief load for all? And does the "forward passing" of paupers hold down the unit's relief load, or is it a case of one family received for one family passed, with the load remaining the same but with the costs of the passing added thereto?



Stretching the State's Dollars

By M. R. ALEXANDER
of the Staff of the Institute of Government

Here is one department which is charged with "Over-Efficiency"—Saves taxpayer but pinches business man—No longer any profit in State business, some say—A survey of centralized purchasing in North Carolina after four years.

TEN million gallons of gasoline, $750,000 worth of assorted groceries, 500,000 gallons of oil, 125,000 tons of coal, and $200,000 worth of tires—to be delivered to the State at various dates during the coming year."

Quite an order, and these are only a few of the items in the State's annual requirements of goods and supplies. Ponder their size for a moment, and you will get some idea of the magnitude of the task conferred upon the State's purchasing agency, the Division of Purchase and Contract. Now compare the prices which the State is paying for some of these items with those you pay and form your own opinion as to how effectively this Division has functioned and how much it has saved the State since it commenced operation in July, 1931.

STATE PRICES—1936

Gasoline—Filling station price less 5½ cents.
Coal—50c up a ton, F.O.B. Mines.
Oil—30c per gallon.
Tires—List price less discounts of 22½ and 33-1 3%.

What is the approximate total saving per year over the former system of institutional and departmental purchasing? It is impossible to say because no one in times like these could tell what would have taken place under the old system. This is particularly true in view of the fact that during the first two years the Division operated prices underwent an almost constant decline and during the past two years an even more pronounced increase. However, there are certain contracts and items based on differentials where the element of market decline does not enter and where a fair comparison may be made. Take some of the items used above, for example, and compare the prices which the State paid the year before the Division began operation:

Gasoline—Filling station prices less 3 cents.
Oil—45-82c per gallon.
Tires—List prices less 10-10 to 33-1 3%.

On the basis of items where fair comparison is possible, it is conservatively estimated that the change from departmental and institutional to centralized purchasing is saving the taxpayers of the State between $500,000 and $1,000,000 a year on total purchases of approximately $8,000,000. Quite a profitable return when it is considered that the Division's annual Budget is only $23,000.

Efficiency Plus

Ironically, one of the few criticisms that have been heard of the State's purchasing set-up comes from some of the business men who supply the State's needs, and is not that the Division is inefficient but rather that it is *too efficient*. "It's all right to buy close," seems to represent their viewpoint, "but it's another matter to take all the profit out of the State business." The business man, of course, has a dual interest, as taxpayer and as vendor, and the latter is paramount because the tax burden is spread over the whole taxpaying population, while profits from State business in his line touch his industry and perhaps himself alone. Which is right and which is wrong may be largely a matter of viewpoint; however, it seems necessary in surveying the results of a relatively new fiscal agency of this type to cite in passing this attitude on the part of certain taxpayers.

Under the former system each State department and institution, and frequently each office therein, did its own purchasing. Where the State now contracts for pencils by the hundred or thousand gross at 2 cents apiece, each officer formerly sent around the corner for a dozen or less at the regular retail price of 5 cents. A few of the larger agencies, of which the Highway Department was a notable example, developed efficient purchasing departments of their own. However, this was the exception and not the rule, and even so, there was no uniformity of practice and no unified system by which the State might secure the substantial discounts to which its vast volume of business if placed together would entitle it.

The change, as productive as its results have been, was not made without bitter opposition. This came not alone from officials, who regarded the power to purchase their own supplies as a vested right and who feared that the result would be endless "red tape" and products not of their choosing, but also from business men, who foresaw the subsequent effect on State prices. And although the efficient operation of the Division has won over the great majority of the officials, the opposition persists today in the attitude of part of the business world pointed out above.

The fight, first, to secure centralized purchasing, and, secondly, to make it work in a setting of business competition, combines, and sometimes opposition, is anything but the prosaic subject which the average person imagines. The State made an abortive attempt in this direction in 1917, setting up a Co-operative Purchasing Committee for most of the State institutions, but the set-up met with an indifferent response from the officials and died figuratively of neglect in 1921. Another and more far-reaching proposal found the forces of business leading the attack. The fight waxed so warm at one stage that one ad-

ministration was actually sending orders out of the State in an effort to force the opposition into line. The organization of the Division in 1931 only transferred the fight from the legislative front to the "sales line"; the age-old battle of buyer and seller which continues today is fraught with live, human events and drama that make this one of the most gripping chapters in government.

The citizen may be interested to know something more of the nature of this organization which the State has set up to purchase and contract for its needs and which is functioning in such a manner that some business men can claim it has taken all the profit out of State business.

Primarily a Contracting Agency

One of the chief points to keep in mind is that the Division is primarily a *contracting agency* rather than what is generally understood strictly as a *purchasing agency*. It would be impractical if not impossible for one agency to do the actual purchasing and checking of $8,000,000 worth of supplies a year, ranging from a 5c lead pencil to a $2,500 piece of road machinery, to be used by State agencies and institutions scattered throughout North Carolina. However, it is possible for a central agency to enter into general contracts to meet the requirements of all, and let each using agency withdraw its needs direct from the vendor, as before, except that prices, terms of delivery, etc. are governed by the general contract. This is the procedure which has been followed from the start.

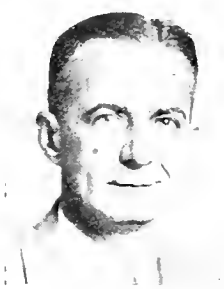
The Division of Purchase and Contract, which was created by the General Assembly of 1931, forms a part of the Executive Department, operating under the direction of the Governor. Including the section devoted to Highway purchasing, which it absorbed, it employs a total of 20 people and occupies the entire second floor of the Highway Building. There is a Director, appointed by the Governor, and assistant directors to head highway, institutional, printing, and public school buying, respectively. The Division thus took over intact the purchasing agency of the Highway Department, already well organized, as well as the purchasing of State printing, handled by the Commissioner of Printing until the abolition of that office. The Advisory Budget Commission is given certain authority and control over the Division, making it in effect the policy making agency therefor. The law also provides for a Board of Award, composed of the Director and any two members of the Budget Commission, which passes on all contracts, and a Committee on Specifications and Standards.

The first step is to determine the needs of the various agencies and their experience with different products in the past. This is done by a general canvass made periodically. The needs are then consolidated insofar as possible into a minimum number of items necessary to meet the requirements, and specifications set up which describe each in such a manner that the State will be assured of the delivery of the exact item desired and yet broad enough to invite wide competition. A call for bids is now prepared and forwarded to every known source of supply as well as advertised in the daily press. These are opened and *publicly* read, at the appointed hour and date, after which the bids are tabulated and formally passed on by the Board of Award. The State "lettings," as they are called, are held at intervals of from 7 to 14 days throughout the year. After formal award has been made, the Division forwards a certification of the contract to all using agencies, which now order their requirements as, if, and when they arise, under the general contract.

Individual and Term Contracts

Two types of contracts are entered into: (1) Term contracts covering an estimated or indefinite amount of material to be delivered when, as, and if needed over a fixed period of time. Approximately 1100 such contracts have been executed and certified; some of them cover a long list of items, as the Contract embracing 53 items of school supplies. (2) Fixed quantity contracts, dealing with a specified quantity of one or more materials to be delivered at a certain place and time. This type of contract is used for items such as foodstuffs and textiles, on which prices fluctuate widely and often and which do not lend themselves well to long-term contracts.

The Division is thus primarily a *contracting* rather than a *purchasing* agency. It executes the general contracts, and the using agencies, except for the state departments, for which it issues purchase orders direct, requisition their needs direct of the vendors thereunder.



A. S. Brower *who has directed the division since its inception in 1931 and who has taken a large part in shaping its organization.*

The "Big Stick"

The result has been a few scattered complaints to the effect that the Division has no *power* to enforce its contracts after they are made. This charge is inaccurate. The law has given the Division a very powerful weapon for use against the official who willfully buys from other sources in violation of the law by making such an official civilly liable for any loss resulting from his illegal action. The Division has operated on the principle, however, that its contracts should be and are so greatly to the advantage of the using agency, that no "big stick" is necessary for their enforcement.

The complaints, it might be stated, have come mainly from cases where the state contractor charged that an unsuccessful bidder expressed his dissatisfaction by cutting under the State contract price and that some of the using agencies bought his product contract or no contract. Fortunately, such instances have been few and infrequent, and have been confined for the most part to one or two industries with temporary ill will or friction between individual members. If it became wide spread such a condition, by removing the inducement to a responsible firm to quote its lowest bid on the basis of the volume of State business, might have a serious effect on State prices.

The Division's power extends to all contracts and purchases of State

supplies, materials, equipment, and printing. This includes the public schools since they have been taken over by the State. The only exceptions are a few items like perishable foodstuffs and highly technical equipment, such as laboratory apparatus, which do not lend themselves to mass purchasing and which are still bought locally. The Division is given complete power, in addition, over specifications, storerooms, contracts for telephone, electric, and other services along with State leases of any offices.

The Division favors North Carolina products wherever possible. In fact, the law so requires, *other things being equal, but only then.* The policy of doing no warehousing, but requiring local distribution, also gives home business a decided advantage. All transactions of the Division are open to public inspection.

The facilities of the various State laboratories and institutions, as well as the experience of the different using agencies, have been utilized to the fullest extent in the testing of products and drafting of specifications, and every effort has been made to avoid arbitrary requirements regardless of local needs. The Division is designed to serve the using agencies, the Director has insisted from the start, and is willing and anxious to have the benefit of their experience and assistance at all times, leading to an attitude of coöperation which has played a large part in its success.

Four Years of Results

To summarize the first four years' operation, it is believed that the following points can be conservatively stated: First, an actual saving to the taxpayers of the State of from $500,000 to $1,000,000; Second, a larger part of State business has been kept within the State than ever before; Third, as a result of research and study utilizing the information generally that was already available locally much progress has been made in eliminating *expensive specialties* and simplifying the needs of the using agencies; Fourth, by the utilization of laboratories and the experience of others the Division to some extent has been made a clearing house of information on State-used products.

Curbing Tax Delinquency

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Seventeen-Point Plan Recommended by Finance Officers—Yardstick Applied to North Carolina Units.

THE Municipal Finance Officers' Association's Committee on Tax Collection Procedure has recently made seventeen recommendations designed to curb tax delinquency, with particular reference to taxes and special assessments on real property.

Despite the fact that tax collections showed a large gain during the past year, as shown by figures given in the December issue of POPULAR GOVERNMENT, no one can deny that the majority of North Carolina's cities and counties have a more or less acute tax delinquency problem. Probably no one can say exactly how much of this problem is the result of hard times, how much is the result of legislation making concessions to the delinquent taxpayer and how much is the result of lax administration on the part of local officials. All three must carry a sizeable share of the burden.

However, it is not the purpose of this article to decide that question. It occurred to the writer that, at the risk of starting a controversy, it might be interesting to appraise briefly North Carolina's status with respect to each of the suggestions made by the afore-mentioned Committee, without making any attempt to pass on the wisdom of the suggestions.

1. *Better control over development of real estate subdivisions.* North Carolina cities and counties exercise little control over the development of subdivisions except such negligible control as may result from zoning regulations. A few cities, in boom times, encouraged such developments by furnishing paving and other conveniences. Undoubtedly an appreciable percentage of our tax and special assessment delinquency problem may be laid at the door of the boom-time subdivision craze which left in the hands of impecunious persons or corporations much property which is overvalued, overtaxed and overassessed.

2. *Limited construction of special assessment improvements, so that the combined burden of general and special taxes will not be so heavy as to take away the property.* Our situation in this respect varies with the individual locality. In the main, our larger cities have made too many special assessment improvements—many of them in recent years after it should have been discovered that special assessments are harder to collect than general taxes. Further, almost every city can point to properties on which the assessments are exorbitant. However, many such assessments are the result, not of extravagance on the part of local officials, but of foolish, speculative and pressure-begetting dreams on the part of land owners.

3. *Prevention of accumulation of unpaid taxes by prompt foreclosure of tax liens.* With a few notable exceptions, North Carolina rates low on this point. In many places tax foreclosures have been started in due time, but allowed to remain pending indefinitely. Each locality must draw its own conclusions as to the wisdom of this policy, which has been very popular politically. Undoubtedly some concessions to hard times have been necessary; but many concessions have been made with an eye on votes rather than necessity.

4. *Study of use of land courts like those in Massachusetts.* So far as the writer knows there has been no official study of this subject in North Carolina.

5. *Equitable assessment of real estate (with valuations incontestable once they are established and reviewed).* In the aggregate, tax valuations in North Carolina are probably not exorbitant. However, since the average county has had no actual revaluation of all realty since 1927, inequalities between individual parcels are both numerous and pronounced. Most localities are

badly in need of a reassessment. As to the incontestability of the valuations, our law, in theory, makes them incontestable once they have been reviewed. In practice, however, numerous valuations are changed yearly without benefit of legal sanction.

6. *Determination of proper place of real estate tax in the revenue system.* This is obviously a question of State policy, and the Committee fails to specify what the proper place of the real estate tax should be. Consequently, it is impossible to give the State a rating in this respect. It can be pointed out, of course, that there is no State realty tax, revenues from this source being reserved for local units.

7. *Appointment of tax collectors and abolition of the fee system of paying them.* Most cities in the State have appointed tax collectors who work on a salary basis. Counties, by an increasing number of local laws, are gradually working toward the same system. The object of appointment is, of course, to give a better opportunity to consider qualifications and remove the political temptations normally arising from direct election by the people. The result of a shift from election to appointment is to eliminate the collector as first cousin to the electorate and make him a first cousin once removed.

8. *Installment payments of both current and delinquent taxes.* Our State law permits payments of taxes in installments of not less than 25%. In practice most collectors work on the theory that any payment offered, even if less than 25%, should be accepted with thanks.

9. *Empowering tax collectors to seek receivers for rentals on delinquent properties.* Our tax collectors have a somewhat equivalent power in some cases, as they are permitted to attach the rents. However, the power is seldom exercised.

10. *Combination taxes for all overlapping jurisdictions, with one bill for each parcel, and mailing or otherwise delivering statements instead of having them called for.* The great majority of all our units mail their statements. There are very few cases in which taxes for both city and county appear on the same bill or are collected by the same office. However, practically all district taxes appear on either the county or the city bill. Special assessments are billed separately, if at all.

11. *Establishment of tradition of prompt enforcement of all taxes.* There are not more than half a dozen localities in the State which could lay claim to such a tradition. Hard times, plus frequent changes in governing and collecting personnel, plus the fact that taxpayers are also voters, have worked against the establishment of consistent collection policies.

12. *No more laws waiving or canceling penalties. No more discontinuance or suspension of tax sales.* It is impossible to tell whether our legislature will adopt this policy or not. The 1935 session was not nearly so free with such laws as the 1933 session.

13. *Graduated schedule of penalties or interest on delinquent taxes.* We have a graduated scale of a sort. Discounts for prompt payment are allowed on a sliding scale. Thereafter penalties are charged at the rate of 1% per month until 4% is reached. After sale delinquent realty taxes bear interest at 8% per annum (though several months elapse between the date the maximum 4% penalty attaches and the date of sale). The penalty on personal property taxes which are not a lien on real estate remains at 4%, regardless of the length of delinquency.

14. *Thorough knowledge about types of property delinquent and the unpaid charges from general and special taxes on each parcel.* Little useful information is readily available on this point. It is known that subdivision properties, corner properties loaded down with special assessments, submarginal farm lands and properties involved in tangled title disputes furnish a large part of our tax foreclosure cases.

15. *Planned tax calendar, related properly to the budget year, date of assessment and maturity of municipal debts.* Our taxes do not fall due until three months after the beginning of the fiscal year in which they are levied. However, the discounts offered for prepayment bring in much money during the first three months, particularly in the Piedmont section of the State. In fact, many local officials feel that the discount allowed is too high and results in the payment by the units of a high premium for the use of money which they do not immediately need. Our local bond maturities are not all well-timed with respect to the tax collection year but, on the average, we seem to have little grave trouble in this respect. One matter along this line which needs consideration is whether it is any longer the policy of wisdom to have taxes and special assessments falling due on the same day.

16. *Shortest possible time consistent with fairness to taxpayers between date of delinquency and date of sale of property.* Our taxes fall due on the first Monday in October. In most cases the law requires the sale to be held on the first or second Monday of the following September, but sales are postponed for one or more months by many local authorities. Tax foreclosure actions are not begun until approximately two years after sale (if then), and the average action will rock along for many months before the property is finally sold. The writer is confident that the average time which elapses between the due date of taxes and the date when the delinquent will lose title to his property is well over five years. In this length of time the original unpaid taxes on city property, plus subsequent taxes and penalties and costs, will average 15% or more of the tax value of the property; and any special assessments will heavily increase the percentage.

17. *In general, the acts governing tax collection procedure should be mandatory, and failure to obey them should be cause for removal of the tax-collecting official from his office.* To a large extent this is true in North Carolina. Our collection laws are nominally very stringent, and failure to abide by them theoretically renders the collecting official liable to removal from office or fine or imprisonment or all three. However, they are seldom enforced against the officials. Their very rigidity works to some extent against such enforcement. All local officials know that it is very difficult to serve as a tax collector or member of a governing body for as much as six months without committing one or more misdemeanors under the tax collection laws.

"UNCLE PETE'S" PALAVER

(Continued from page one)

ing the employees, so the boys all agreed that something should be done about these poor fellows. They got together and gave the employees a twenty per cent raise. 'Course this didn't come anywhere near putting wages back to the 1929 level, but all and sundry were extremely glad to get that much.

Counties and Cities Join Fight

"Still having some surplus left, it was only natural for everybody to try to get a part of it. The counties of the State made an effort to grab off some to help them meet their road bonds. The cities decided they could use some to help fix up their highway streets. In the scramble the counties lost out, since most of the boys figured enough had been done for them through the State taking over the schools and the maintenance of the roads, but the cities put on the steam and finally emerged with a half million dollars each year for their streets. This was only about a fourth of what they started out to get, but with so many wanting a piece of the pie they had to take that and like it.

"The next thing to come up was how much of the highway funds should go to the general fund of the State. In 1933 the boys allocated a million dollars a year from the highway fund to the general fund and everybody howled 'diversion.' The boys this year felt that they must keep faith with the motorists of the State and stop all this 'diversion.' They figured and figured and finally decided the best way was to levy a sales tax on gasoline to be taken out of the present six cents per gallon tax. You see when you buy five gallons of gas you used to pay thirty cents to the State highway fund. Suppose the total price of five gallons is a dollar, now you still pay thirty cents to the State only three cents goes to the general fund and twenty-seven cents to the highway fund. A sort of a wheel within a wheel, and a very neat arrangement cause now only a million and six hundred thousand or so dollars will go from the highway fund to the general fund. Folks can't howl any more about 'diversion' and at the same time the boys further reduced the possibility of future highway surplus.

What? Reduce Taxes!

"Well, sir, after making all these changes some of that surplus was left. Boy! How the old heads longed for the deficit kicking days; no deficit ever caused as many headaches. Right in the middle of the dilemma someone suggested a reduction in automobile license tax. I believe if the boys hadn't been tired they would have tarred and feathered him. Who ever heard of such a thing as reducing taxes! Anyway, they figured and figured to try to find some other place to hide this dern surplus, but no use. They finally decided that to reduce the license tag cost was about the only way out. Then the fun did begin.

"The Senate passed a bill reducing the rate ten cents on passenger cars to forty-five cents per hundred pounds and sent it over to the House. When the House got the bill one of the economists got up and made a speech. He said that the more the license tax was reduced, the more cars people would buy and the more gasoline people would buy and the more money the State would get. He said this, of course, was subject to the law of diminishing returns, whatever that is. Most of the boys didn't know what he was talking about, but they decided that if a man knew so much about all these laws it was worth trying, so they knocked off another five cents on the hundred pounds.

"Hot Dog! Did the Senate get mad! It seems that someone in the Senate had heard of this law of diminishing returns before, so they wouldn't agree and the bill went to a conference committee two days before the time for adjournment. The members of the conference committee from the House weren't at all sure about this diminishing returns business and agreed to raise the ante to forty-five cents again. Then someone asked about whether or not this could be done in a single day since it raised the rate of tax from that already passed by the House, and our constitution says an act which levies a tax must pass by roll call on two separate days. Well, sir, that put 'em in the air again 'cause the boys wanted to get home the next day. So they took it up with the Attorney General and he gave them an unofficial opinion. After they heard his opinion they felt it might mean staying in Raleigh an extra two or three days, and the boys were so tired of this surplus by then that they just decided to leave it at forty cents and get rid of the thing.

"The next day the conference committee reported the bill back to the Senate and told 'em about this law of diminishing returns. They told the Senate that the last time this law was tried it didn't work, but there had been a lots of talk about it and they thought the law had been amended or was going to be amended, so that like prohibition it would be a noble experiment. A few of the boys were doubtful about the law being amended, but they were also tired and let it go at that."

"Bill" Thompson spoke up, "Pete, what do you think of this thing?"

"Uncle Pete" again put a squirt of tobacco juice through the stove door and said, "Well, I don't know. If they have amended this law of diminishing returns I haven't heard about it, but if by cutting those licenses it will put more money and more surplus in the highway fund it's liable to play havoc with the 1937 General Assembly. To dispose of another surplus is too much of a task to put on the boys. Why I remember back in 1911. . . ." But that's another story.

●

COURT HOUSE CHAFF

(Continued from page ten)

for the Board of Education and if you see fit to nominate me, I'll be prouder still of the opportunity you give me, to educate my ancestors."

One of his best stories is a fishing story. "Did I ever tell you about that big fog that caught me one morning up on Little Tomcat? Well, sir, I started fishing before daylight. The fog got heavier and heavier but I kept catching fish and didn't pay no 'tention to it. My pockets was full of fish and I was kinda thinkin' about goin' to the house and gettin' the ol' 'oman to fix me up some rations, when suddenly the sun popped right through the fog. Well, sir, dern my skin if it ain't the gospel truth, I'd fished right on up to Panther Knob. I musta been a quarter of a mile from the crick."

Bulletin Service

Opinions and rulings in this issue are from State Department letters from January 15 to February 15

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Prepared by
M. R. ALEXANDER

I. Ad valorem taxes.

A. Matters relating to tax listing and assessing.

1. Exemptions—religious and educational organizations.

To L. L. Levinson. Inquiry: Chapter 183, Private Laws of 1933, provides that churches are exempt from payment of paving assessments subject to a vote of the people. Is an election for this purpose a vote against registration?

(A.G.) Section 3 provides that the act shall not take effect "until ratified by a majority of the registered voters." These words would seem to control.

3. Property of State agencies.

To T. S. Johnson. (A.G.) State-owned automobiles are exempt from city license tax regardless of what department or institution owns and operates same.

To W. Z. Penland. (A.G.) Property foreclosed and now owned by the World War Veterans Loan Fund is State-owned property from the time it is foreclosed by the Fund, and is not subject to ad valorem taxation. Of course, the Fund would be liable for taxes accrued and unpaid prior to the time of foreclosure.

5. Exemptions—city and county property.

To D. H. Conley. Inquiry: Is the County Board of Education liable to the town for street assessments due against a piece of school property *at the time it was purchased* by the former?

(A.G.) Yes.

10. Exemptions — municipal bonds and notes.

To Buren Jurney. Inquiry: Are the notes of a county exempt from taxation just as the bonds?

(A.G.) This Department has ruled that no distinction between the terms is justified unless plainly stated in the law in such manner that it can be seen that it was intended, and this does not appear in the section exempting bonds.

12. Exemptions—veterans' compensation.

To D. M. Stanley. Inquiry: Is property purchased with veterans' compensation or soldiers' bonus exempt from taxation?

(A.G.) No. When the money is invested in property, it is subject to taxation just as any other property. See Lambert vs. Guilford County, 201 N. C. 67.

110. Listing of personal property.

To F. W. McGowen. Inquiry: Are the following items subject to inclusion in the $300 personal property exemption authorized by Section 306, 1935 Machinery Act, subsection 8: watches and clocks, electric refrigerators, sewing machines, talking machines, poultry, dogs (when listed at a value)? (A.G.) Yes.

B. Matters affecting tax collection.

20. Delinquent taxes—time for sale and foreclosure, 1933 taxes.

To Mrs. Evelyn H. Pleasants. Inquiry: How long does the town have to start foreclosure proceedings on 1933 taxes which were advertised October 8, 1934?

(A.G.) This Office is of the opinion that you would have 24 months from the date of sale of the unpaid street assessments and 1933 taxes.

29. Tax foreclosure—necessary parties—Chapter 428, Public Laws 1935.

To R. B. Lee. Inquiry: We find it necessary to make service of summons by publication in a hundred or so tax suits. Would one general summons, setting out the purposes of the actions, immediately followed by the title of each separate action, suffice? The purpose, of course, is to reduce the cost of publication.

(A.G.) The question being undecided by the court, the safer course would be to make individual publication.

31. Tax foreclosure—procedural aspects.

To Frank Armstrong. Inquiry: What is the procedure to cure a defect in a tax foreclosure suit due to failure to make parties of holders of mortgages against the property?

(A.G.) Chapter 428, Public Laws 1935, intended to meet the situation in the case of Mayo vs. Commissioners, 207 N. C. 211, purports to give 12 months from the ratification of the act (May 11, 1935) to bring in necessary parties to foreclosure suits. However, this applies only to suits *then pending*, and a suit entered in November, 1935, would not come within the provisions of this Act.

While such persons may be made parties and brought in by proper service of process before any final judgment is entered which would preclude them from making a defense, I am of the opinion that the action will be considered as brought against these parties from the time process is issued against them and served within due time, and that they have the right at such time to interpose any answer which may protect their rights. This includes a plea of the Statute of Limitations if any has run.

The law, of course, requires foreclosure suits under C. S. 8037 to be brought within two years after the date of the tax sale. Chapter 75, Public Laws 1935, was intended to extend the time for the foreclosure of tax sale certificates on land sold for 1932 taxes to December 1, 1935. The question of whether you may take advantage of this act depends upon the date the tax certificate was obtained, that is, the date of sale.

This Department has held that the $6 costs mentioned in Chapter 560, Public Laws 1933, sets a limit to costs which may be charged against the taxpayer. I think it would be competent for the county to pay the costs set down in the fee bill for services done in its behalf.

35. Tax foreclosure—costs and fees.

To C. F. Rice. Inquiry: Please advise if Chapter 379, Public Laws 1933, applies to suits started by counties and municipalities for the foreclosure of tax sales certificates?

(A.G.) In my opinion it does not. I think Chapter 560, Public Laws 1933, providing that "a total cost to the taxpayer including attorney's fees shall not exceed $6 in each suit for foreclosure," supersedes all other laws relating to costs in connection with these tax foreclosures.

44. Tax foreclosure—pro-rating of proceeds.

To N. H. Yelton. Inquiry: The county's tax certificates for 1929 have been foreclosed and bid in by the county, the final decree of sale signed by the Clerk, and the deeds made to the county. Is the school fund entitled to its pro rata share of the funds immediately or does this await the time when the county realizes the money from the sale of the property?

(A.G.) I think the better opinion would be that the school fund should share pro rata in the final disposition of the property. The delinquent taxes are still uncollected, the county has no fund out of which to pay for property thus taken in, and the purpose of the law is not to substitute other taxes for the tax which the county is endeavoring to collect in this way.

47. Tax foreclosure—procedure when bid in by city or county.

To O. B. Crowell. Inquiry: Where the charter of a town does not specifically cover the power to own real estate, can it purchase property within its boundaries at its tax foreclosure sales and re-sell?

(A.G.) I am of the opinion that your town may so do. However, the sale of such property will have to be by public auction. See the section of the Consolidated Statutes on Municipal Corporations.

To R. R. Blanton. Inquiry: May a town which has bought in property at tax foreclosure sales transfer the bids to a private purchaser and save the expense and delay of another public sale as required by Statute?

(A.G.) I could not consistently advise you as town attorney to recommend any different procedure from that set out in the Statute.

III. County and city license or privilege taxes.

A. Levy of such taxes.

10. City automobile licenses.

To M. D. Savage. Inquiry: May a municipality levy a city automobile license tax not in excess of $1? (A.G.) Yes, under C. S. 2621 (31) (c).

12. City driver's licenses.

To A. P. Fulk. (A.G.) The 1935 Safety Responsibility Act provides that no operator's or chauffeur's license shall be required other than the State license required in that Act, prohibiting municipalities from requiring city licenses in addition.

40. License tax on peddlers.

To J. M. Richardson. (A.G.) Section 121 (f), Revenue Act 1935, provides that the Board of Commissioners of any county

upon proper application may exempt from the annual peddlers' tax levied in this section disabled veterans who have been bona fide residents of the State for 12 or more months continuously.

To Matt H. Allen. Inquiry: Does Section 121 (f) of the Revenue Act, exempting World War veterans from payment of the peddlers' tax, extend to the case of a veteran operating a portable moving picture outfit?

(A.G.) Section 105 levies a specific tax on the operation of moving picture shows and contains nothing which would exempt a veteran. Therefore, the exemption contained in Section 121 (f) must be strictly construed, and since it does not mention moving picture shows, it must be held that it applies only to the business of selling goods, wares or merchandise.

47. License tax on slot machines.

To Mrs. Mary G. Burgin. Inquiry: Does the tax on slot machines provided by the Revenue Act extend to pin tables, play games, and like amusements?

(A.G.) Yes. See Section 130, which reads, ". . . or any lock operated by slot wherein money or thing of value is to be deposited or any machine for the playing of games or amusement operated by a slot wherein is deposited any coin or thing of value."

IV. Public schools.

B. Powers and duties of counties.

1. Erection of school buildings where no petition.

To J. J. Tarlton. Inquiry: Who has the final word in determining when new school buildings are necessary and what type shall be constructed, the County Commissioners or the County Board of Education?

(A.G.) The County Commissioners constitute the only agency which may deal with the subject of school buildings. The County Board of Education still may petition the Board in regard to the building and repair of school buildings, but the latter have a discretion in the matter which cannot be removed except in case it is abused.

F. School officials.

20. School district committeemen—election and terms.

To J. D. Shaw. (A.G.) The law fixes the number of school committeemen to be selected for a school district. The number is normally three. Five are selected in some districts, but this is by special law applicable to such districts.

To Clyde Erwin. (A.G.) A permanent change of residence would undoubtedly vacate the office of a member of the County Board of Education. However, I do not think this is the case if the absence is only temporary, and it is not the intention of the person to relinquish his residence in the State, but on the contrary he continues to exercise the rights of citizenship here.

I. School property.

7. Special districts abolished by 1933 School Machinery Act.

To Ervin and Butler. Inquiry: A town *special charter district*, terminated by the 1933 Act abolishing school districts except for the purpose of paying debt, was consolidated with several of the outlying rural schools into a *city administrative unit*. Does the County Board of Education have power to sell a school building which is located in the former *special charter district* and which is no longer used, without consent of the Board of Trustees of the new *city administrative unit?*

(A.G.) The 1933 and 1935 laws continue title in the employees of the *special charter district* where same has been included in a *city administrative unit*, and retain its governing body as the governing body of the new city administrative unit. Chapter 455, Public Laws 1935, Section 5.

Such a provision recognizes the fact that title at the time of the enactment of the School Machinery Act of 1933 was really in such Board of Trustees. However, if title was in the County Board of Education at that time, as it contends, this provision would not have the effect of vesting it in the board of trustees of the special charter district, and such property could be sold if its use had been abandoned by the Board of Education.

Under the school law as it exists today, the County Commissioners constitute the only agency which may build school buildings. The proceeds of school property, therefore, can not be paid over to local agencies, such as the board of trustees of a special charter district, for any purpose. Indeed, the law does not provide authority for the expiration of such funds or designate any purpose for which such local board of trustees might expend it.

V. Matters affecting county and city finance.

A. Refinancing.

6. Interest funding bonds.

To W. E. Easterling. Inquiry: Is an interest bearing bond valid which is to fund past due interest coupons and accrued interest on past due bonds of an issue representing debt created for a purpose which was not a *necessary expense* within the meaning of Article VII, Section 7, Constitution?

(A.G.) I see no legal objection to funding principal and interest in separate bonds. Unpaid coupons as well as delinquent bonds continue to bear interest after maturity. The interest is a part of the original obligation and must be treated entirely as the bond so far as any legislative or constitutional restrictions are concerned. Moreover, bonds funding such interest are not required to be submitted to a vote of the people where the original bonds were so authorized. Bolick vs. Winston-Salem, 207 N. C. 786.

T. Fire insurance purchased by local units.

10. Policies in mutual companies.

To C. W. Hayes. (A.G.) Under a recent decision in the Supreme Court of this State, municipalities have the right to insure in mutual companies.

VI. Miscellaneous matters affecting counties.

X. Grants and contributions by counties.

3. Soil erosion equipment.

To W. E. Easterling. Inquiry: Please construe Chapter 172, Public Laws 1935, relating to the giving of county notes for the purchase of soil erosion equipment?

(A.G.) In my opinion, such notes should be general obligation notes, and although subject to its approval, they do not have to be advertised and sold by the Local Government Commission, but may be given direct to the seller.

Y. Ordinances of county commissioners.

10. Repeal ordinances.

To Hugh G. Mitchell. Inquiry: The county board successively passed a bond ordinance, a repealing ordinance, and an ordinance to repeal the repealing act. What is the legal effect?

(A.G.) Such action as a general rule restores the law as it was before the passage of the repealing act without formal words for the purpose, unless otherwise provided for in the repealing act or by some general statute. This appears to have been the intent of the Board.

Z. Workmen's Compensation.

1. Officers entitled.

To John W. Hinsdale. Inquiry: Is a full-time deputy sheriff, appointed under authority of 270 Public-Local Laws 1929, whose qualifications and salary are fixed by the board of county commissioners, entitled to Workmen's Compensation as a county employee?

(A.G.) Strictly speaking, a deputy sheriff is what the term implies, a deputy of the sheriff, and receives his authority for his acts through a commission directed to him by the sheriff.

However, in common everyday language, sometimes the term "deputy sheriff" is used to designate a class of officials with certain powers inferior to those of the sheriff. Such officials have frequently been created by public-local acts when the term "deputy sheriff" does not necessarily imply any relation of agency. On the contrary they were intended to be officers with similar duties, created by statute on account of an emergency, or for the better administration of the law.

In such cases it has been the opinion of this Department that such deputies are employees of the county from which they receive their pay and not of the sheriff. A close reading of the public-local act under which this deputy was appointed confirms such conclusion in the case of your county.

VII. Miscellaneous matters affecting cities.

B. Matters affecting municipal utilities.

20. Franchise taxes.

To City Attorney, Washington. Inquiry: What is the proper procedure for a city to contest the validity of the franchise tax levied by the State on cities selling electric current to other municipalities?

(A.G.) The Revenue Act provides only one method, and that is to pay the tax under protest, and upon refusal by the Commissioner of Revenue to return same, to bring suit against him for its recovery.

F. Contractual powers.

5. Lease of city property.

To G. H. Jones. (A.G.) I am inclined to doubt whether it is necessary for a city

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under the provisions of C. S. 2688 to advertise in making a lease such as discussed in your letter. In case of short term leases and various concessions, in my opinion it is not necessary in all cases to advertise the letting. I know it is quite customary in cities and towns to handle leasing of market house and other space on short term leases without publication and public letting, which I believe is free from violation of the Statute.

N. Police powers.

20. Regulation of trades and businesses.

To C. B. Phillips. Inquiry: Is the speed of trains through incorporated towns regulated by State law or local ordinance?

(A.G.) If a railroad company is of the opinion that a town ordinance on the subject is unreasonable, C. S. 1058 provides that it may file a petition with the Utilities Commission, which has power under this Statute to prescribe such speed as in its judgment seems just and proper.

VIII. Matters affecting chiefly particular local officials.

B. Clerks of the Superior Court.

1. Compensation and fees.

To F. S. Hall. (A.G.) It is the opinion of this Office that Chapter 379, Public Laws 1935, applies only to funds which actually pass through your hands by virtue of your office, and that the amount applied and credited on notes secured by a deed of trust would not be considered a part of disbursements unless such funds actually were a part of the purchase price of the property at the sale by the trustee under the deed of trust.

To Alvah Early. Inquiry: Is the Clerk entitled under C. S. 3903 to 3% commission on sums of money turned into his office representing unproven claims in closed banks? (A.G.) Yes.

10. Collection of process tax.

To R. S. Boyce. (A.G.) This Office has ruled that process tax should not be assessed in a bill of costs in criminal actions in recorders' courts.

To B. D. McCubbins. Inquiry: Please construe C. S. 7880, subsection 88, paragraph "c," regarding the process tax.

(A.G.) No process tax or other tax is to be charged against the State when it is a party plaintiff to a suit. No tax can be charged against the defendant upon recovery by the State for the reason that the situation is not expressly included within the statute, and statutes must be construed strictly in favor of the taxpayer.

79. Decedents' estates — distribution and administration.

To B. D. McCubbins. Inquiry: Please turn to C. S. 93 on distribution of property of decedents. What do you construe debts of the 1st, 4th, and 6th classes to mean? What of the widow's year's allowance?

(A.G.) First class—deeds of trust, mortgages or chattel mortgages, executed by decedent as security for debt. Fourth class—any taxes due United States and State. Sixth class—medical services rendered to the deceased person within 12 months prior to his decease. We are of the opinion that the widow's year's allowance would be prior to any of the classes enumerated in C. S. 93.

80. Decedents' estates—executor's and attorney's fees.

To J. E. Swain. Inquiry: Are executors, administrators or trustees entitled to commissions of 5% upon receipts which have come into their hands from real estate agencies to which they have allowed commissions for collecting rents?

(A.G.) This would seem to me to be in the Clerk's discretion, as C. S. 157 authorizes both a fair commission up to 5% to the fiduciary and a reasonable sum for necessary charges in management. Some circumstances might justify employment of a rental agency. In other cases you might conclude that such was not required and that the fiduciary should save the estate this expense.

84. Special proceedings—bonds and fees of commissioners.

To J. E. Swain. Inquiry: C. S. 3896 fixes the maximum sum the Clerk may allow a commissioner appointed to sell lands for partition under proceedings before the Clerk. C. S. 766 (a), subsequently enacted, stipulates a "reasonable fee" in the discretion of the Clerk. Which controls?

(A.G.) In my judgment, the latter statute is directed to the same subject and repeals C. S. 3896 to the extent that the allowance of a reasonable commission is now within the discretion of the Clerk.

101. Unclaimed assets in hands of clerk.

To J. P. Fletcher. Inquiry: Please refer to Chapter 546, Public Laws 1933, relating to closed banks. After the money is turned over to the Clerk he holds it for three months. May he pay claimants to any of these funds in the meantime?

The Act in question contemplates that such funds may be claimed during the three month period by parties having a right to them and paid over upon the establishment of such right. While no machinery is provided in the law for this purpose, this Department has held it would be proper in case claim is made before a Clerk for any part of this money to give immediate notice to the University Escheator (J. B. Cheshire, Raleigh) to verify the merits of the claim and to give the University the right to be heard.

C. Sheriffs.

22. Settlement for tax collections.

To W. F. C. Edwards. (A.G.) Under C. S. 7994 (4) and 1334 (46), a Sheriff or other tax collecting official is not entitled to receive the tax books for the year 1935 until he has made full settlement with the county for 1934 taxes.

If settlement was not made until the first Monday in December, 1935, the Sheriff would not be entitled to receive the 1935 tax books until that date, and therefore is not entitled to commissions on such 1935 taxes as were paid prior to said date.

D. Registers of Deeds.

70. Death certificates.

To R. T. Stimpson. Inquiry: Please construe C. S. 7095, Art. 6, Subchapter 2, which reads as follows: "If the registrar has reason to believe that the death has been due to unlawful act or negligence, he shall refer the cause to the *coroner or other proper officer* for investigation and certification, who shall make the certificate of death required for a burial permit." To whom does *other proper officer* refer?

(A.G.) I do not think that the person who drew the act had any particular "other officer" in mind but assumed there might be somebody else designated by law to make such an investigation. I am of the opinion that no person other than the coroner, or a person specially selected to fill his place in case he is not available, is competent to make such an investigation under the law. It might be necessary upon such an investigation to hold an inquest, and not only is the holding of an inquest an exclusive office of the coroner, but all inquiries relating to the manner of death when there is suspicion of any unlawful act or negligence logically come within the sphere of his official duties. If the coroner is not available, my suggestion is for the Clerk to appoint a special coroner under C. S. 1014, who may sign the certificate.

E. County Auditor.

1. Duties.

To Junius D. Grimes. Inquiry: Is it the duty of the County Accountant under C. S. 962 (e) to audit the books of the Clerk, or is the duty met by the yearly examination of a certified public accountant?

(A.G.) After a careful reading I come to the conclusion that the County Accountant is not relieved of this duty by the audit of a C. P. A. I do not think the authority delegable, but do think that the County Accountant might make the audit of the C. P. A. the basis of his own audit and thereby save time and money. To do this, however, he should thoroughly check and verify its accuracy, and it should not be done in a perfunctory way.

L. Local law enforcement officers.

5. Prohibition law—transportation in interstate commerce.

To Thos. G. Neal. Inquiry: Please construe the law relating to interstate shipment of liquor through North Carolina.

(A.G.) Since the repeal of the 18th Amendment intoxicating liquors are subjects of interstate commerce between states where prohibition does not prevail. The State law is powerless to prevent the transportation of liquor through the State from one state to another if this transportation is in fact a bona fide interstate transportation. I would say that the immunities attending interstate commerce in liquor are not confined to a common carrier. The question is primarily one of fact, rather than law, namely, is it bona fide interstate transportation?

51. Court procedure.

To H. A. Shaw. (A.G.) The court itself is vested with the authority to nol pros criminal actions and there could be no nol pros without an order from the court. This usually is purely formal and is done upon the motion of the solicitor. When such an order has been made by the court, we are of the opinion that such action is not reviewable.

52. Pardon and parole—effect.

To T. L. Kirkpatrick. (A.G.) This Office is of the opinion that the mere fact that the Governor had pardoned a man would not have the effect in itself of restoring his right to drive an automobile, as provided in the Statute for the violation of which he was convicted.

T. Justices of the Peace.

5. Costs.

To S. B. F. Copeland. (A.G.) Your remedy for the collection of unpaid costs in the case of a suspended judgment is by way of capias issuing out of your court requiring the person to be brought before you. At that time it would be competent for you to commit the convicted person to jail if the costs are not paid.

NOTICE TO TAX OFFICIALS, LAWYERS, AND PROPERTY OWNERS

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About 1935

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New Insurance Issued (Paid for Basis)	$ 49,524,700
Total Insurance in Force	329,837,624
Gain in Insurance in Force	15,002,827
Payments to Policyholders and Beneficiaries in 1935	5,981,892
Total Payments to Policyholders and Beneficiaries Since Organization	87,350,650
Surplus, Special Reserve and Contingency Funds for Additional Protection of Policyholders	4,325,000
Assets Increased Over	4,300,000
Total Assets (Highest in History)	62,206,099
Ratio of Actual to Expected Mortality in 1935	53%
Interest Earned on Total Invested Assets in 1935	5.6%
Actual Interest Collections on Mortgage Loans in 1935 Averaged	6%
Actual Interest Paid in 1935 on Funds Held in Trust	5%

◈

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